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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Cr. Bail Appln. No.S-520 of 2018
1st Cr. Bail Appln. No.S-97 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
15.03.2019.	

Mr. Habibullah G. Ghouri, advocate for applicant Noor Ahmed Abbasi/Kalhoru in Cr. B. A. No.S-97 of 2019.

Applicants Sikander Ali and Nazir Ahmed, both by caste Abbasi/Kalhoru present in person (on bail) in Cr. B. A. No.S-520/2018.

Mr. Sharafuddin Kanhar, APG.

Mr. Ali Nawaz Ghanghro, advocate for complainant in Cr. Bail Appln. No.S-520 of 2018.

By this common order I propose to dispose of both the above-cited bail applications, which are inter connected having been filed in one and same crime and common question of law and facts is involved therein.

2. Applicants Sikander Ali and Nazir Ahmed, both by caste Abbasi/Kalhoru, who are present on interim pre-arrest bail, seek pre-arrest bail, while applicant Noor Ahmed Abbasi/Kalhoru seeks post arrest bail in Crime No.39/2018 of Police Station Dokri, District Larkana, registered under Sections 365-B, 496, PPC. Plea of pre-arrest bail of applicants Sikandar Ali and Nazir Ahmed and that of post arrest bail of applicant Noor Ahmed were declined by the learned III-Additional Sessions Judge, Larkana vide separate orders dated 08.10.2018 and 08.02.2019, respectively.

3. According to the case of prosecution, on 06.9.2018, at about 1400 hours, complainant Faiz Mohammad Kalhoru lodged FIR at P.S Dokri, stating therein that on 31.8.2018 his cousin Munawar Ali and brother-in-law Abdul Haq came to him from Dokri town as guests. After having dinner, they went to sleep in the house along with other family members including complainant's daughter Mst. Naheed; at about 1.00 a.m. (night) complainant party heard some noise of parking of car outside their house, on which complainant and others woke up. The complainant opened the outer door of his house, whereupon six persons

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intruded into his house, out of whom four persons were identified to be Sikander Ali armed with K.K., 2. Liaquat armed with repeater, 3. Nazir, 4. Qabool Mohammad, all by caste Kalhoro, and two unidentified persons armed with pistol. It is alleged that on the force of weapons the accused persons overpowered the complainant party and accused Sikander Ali forcibly dragged complainant's daughter Naheed, who raised cries and then all the accused persons dragging her from the house took her away with them in their car. The complainant after waiting for his Nekmard, consulted him and on his advise went to police station and lodged FIR.

4. Mr. Habibullah G. Ghouri, learned Counsel for applicant Noor Ahmed, submits that the name of applicant does not find place in the FIR and the further statement of complainant was recorded on 11.9.2018, in which he has not implicated him, even the P.Ws, who are cited in the FIR, have not implicated him in their respective 161, Cr.P.C statements. He next submits that on 18.1.2019 second further statement of complainant was recorded by the police, in which he has merely shown his presence and no role has been assigned to him in the second further statement. He further submits that at the time of submission of interim challan against co-accused the name of applicant was not arrayed as an accused, besides, the alleged abductee, who appeared before the Women Police Station was produced by the police before III-Additional Sessions Judge, Larkana on 08.2.2019, where she recorded her statement implicating him but has assigned no role and thereafter on 09.2.2019 she appeared before the Magistrate, where her statement in terms of Section 164, Cr.P.C was recorded. He next submits that FIR is delayed for about 06 days and the applicant being their co-villager was not identified by them nor was arrayed as accused and subsequently the complainant party took U-turn to implicate him without justifying their earlier version, whereby he was not named. He has also advanced that after completion of investigation case against the accused persons was disposed of by the police under "A" class, but the learned Magistrate did not concur with the police opinion and directed the I.O. to file report u/s 173, Cr.P.C on prescribed proforma vide his order dated 02.12.2018. He further submits that in these circumstances a *prima facie* case for bail is made out and the case of

applicant in this crime, in view of his submissions, calls for further enquiry.

5. The applicants, who are present in person on interim pre-arrest bail, have argued that though they are co-villagers of complainant and known to each other, yet have no nexus with the alleged offence and they have been implicated falsely by the complainant for some malafide intention and ulterior motives. They also submit that their case requires further enquiry, hence interim order granted in their favour may be confirmed.

6. Mr. Ali Nawaz Ghangro, learned Counsel for the complainant in Cr. Bail Application No.S-520 of 2018, opposes the bail application, on the grounds that the applicants are nominated in the FIR with specific role, besides, they have not joined the investigation, hence their admission to pre-arrest bail will cause prejudice to the case of complainant.

7. Mr. Mohammad Imran Abbasi advocate, who has filed Vakalatnama on behalf of complainant in Cr. Bail Application No.S-97 of 2019, also opposes the bail application and submits that applicant Noor Ahmed has been nominated by the complainant in his further statement as well as by alleged abductee in her 164, Cr.P.C statement recorded before Magistrate. He submits that sufficient material has been collected by the police against him, therefore, his case does not fall within the ambit of subsection (2) of Section 497, Cr.P.C, besides, offence with which the accused have been charged carries maximum punishment and being heinous one the applicant/accused does not deserve any leniency in shape of his/their release on bail.

8. I have heard learned Counsel for the parties and have gone through the material made available before me on record.

9. Admittedly, the FIR is delayed for about 06 days and the distance between the place of incident and the police station is only 01 kilometer. Moreover, the parties are known to each other, even then the complainant did not furnish the explanation for causing inordinate delay in reporting the matter to police. The alleged abductee though was taken away by the accused, but she did not depose a single word

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against any of the accused regarding *zina-bil-jabr* with her or any inducement to compel her to enter into Nikah with any of the accused for the reasons best known to her. In order to improve her case she, however, has stated in his statement before Additional Sessions Judge as well as 164, Cr.P.C statement that accused were attempting to commit zina with her but they could not succeed. As far status of the further statement is concerned, under the scheme of Code of Criminal Procedure, 1898 no specific provision is provided by law through which it can be deduced that further statement is a legal document; however, as the dictum of Hon'ble Supreme Court of Pakistan in its numerous judgments, the further statement cannot be equated with the FIR and it is a fake statement being brainchild of the prosecution. Reference can be had from the case of *Abid Ali alias Ali v. The State* (2011 SCMR 161). It is also astonishing to note that the alleged abductee, who allegedly was abducted away by the accused for nothing but to set her free after few days, neither she was found from their house nor has been recovered from the captivity of any of the accused or from their house. Such her conduct raises multiple queries in the prosecution evidence and thus entitles the applicants for concession of bail. It is also tendency of the area, as has been observed, that the girl(s) / lady(ies), after leaving their spouse and joining hands of their parents, always use to take U-turn and implicate the accused, but such their attitude has not been appreciated by any forum.

10. In view of above, the case against the applicants requires further enquiry in terms of Section 497(2), Cr.P.C. Consequently, both the applications are allowed. The interim order granted to applicants Sikandar Ali and Nazir Ahmed in Cr. Bail Application No.S-520/2018 vide order dated 15.10.2018 is hereby confirmed on same terms and conditions; while applicant Noor Ahmed, who is in custody, is directed to be released on bail on his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and P.R bond in the like amount to the satisfaction of trial Court.

JUDGE