

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. B.A. No.1387 of 2015

Date of Hearing : 02.11.2015.
Date of Order : 02.11.2015
Applicants : Hajan & others through Mr. Ghulam Rasool Sohu,
Advocate
Complainant : Ashfaq Hussain through Mr. Gada Hussain, Abro,
Advocate
The State : Ms. Rahat Ahsan, D.P.G

ORDER

NAZAR AKBAR, J. On 16.10.2015 through this application, three Applicant/Accused facing trial in Session case for offences under sections 365-B, 34, read with Section 376 PPC arising out of FIR No.108/2015, registered on **23.02.2015** at Police Station Zaman Town, Karachi, prayed for bail before arrest. Bail before arrest of Applicant/Accused No.1 Hajan was declined and the present Applicants/Accused were granted interim bail before arrest. Today Mr. Gada Hussain Abro, Advocate for the Complainant has straightaway agreed to argue bail application on behalf of the Complainant. I have heard learned Counsel for the Applicants on 16.10.2015 as well as today at length. His contentions are same as were earlier that the victim Samreen has entered into marriage with Applicant/Accused No.1 with her own free will and copy of Nikhanama was sent to the Police Stations Zaman Town, Karachi as well as Police Station Mehrabpur on **03.04.2015** through TCS. He pointed out that in C.P.No.S-1178 of 2015, the victim and Accused No.1/Hajjan appeared before the Sukkur Bench, High Court of Sindh for seeking protection of police and even the victim has sworn an affidavit on **10.04.2015** confirming she was married to Accused No.1/Hajjan. He has again attempted to read out the Medical Report to show that in Medical Report the victim has been shown wife of applicant/Hajjan. The learned Counsel has further contended that there is discrepancy in the

Statement and her 164 Cr. P.C. statement before the investigating agency. There is no element of enmity or malafide on the part of the Complainant and the victim to falsely implicate the accused persons and therefore, they are to be tried and punished for the heinous crime under Section 365-B, 34, read with Section 376 PPC. He has further contended that beside **Section 34 PPC, Section 35 PPC** is also attracted in the case of present accused. The accused present before this Court were having complete knowledge of the fact that the victim was in illegal custody of Applicant No.1/Hajan for a very long period of time during which the offence was completed and they never objected to it and joined accused No.1 by facilitating him not only in kidnapping but also keeping the victim in unlawful custody. There is sufficient material evidence with the prosecution to connect the accused with the offence. He has relied upon the following case laws:-

- a. **2015 S C M R 1394 (Muhammad Sadiq and others vs. The State and another**
- b. **2015 S C M R 825 (Naseer Nasreen Bibi vs. Farrukh Shahzad and another**
- c. **PLD 2014 760 (Alam Zeb and another vs. The State)**
- d. **2013 P. Cr. L J 1105- (Muhammad Hanif and others vs. The State**

I have gone through the case law, perused the documents filed with the application and from the contentions of learned Counsel I have observed that:-

- i. The victim on the first ever opportunity has denied her marriage with the accused Hajan and she has named the present co-accused Pervaiz, Sikander and absconder Bachal.
- ii. The victim was abducted / enticed away from Karachi on **22.02.2015** and after 38 days she was allegedly shown to have entered into marriage with Hajan on **1.4.2015** at Khairpur.

- iii. The other noticeable thing from the own showing of applicants is that the accused have sent copy of Nikhanama and freewill document through TCS to Police Station Zaman Town, Karachi but they have not impleaded SHO Zaman Town in their constitution petition which they filed at Sukkur Bench of this Court on **10.4.2015**.
- iv. The applicant suppressed the fact from the Sukkur Bench of this Court that FIR No.108/2015 for the offence of abduction of the petitioner No.1 / victim Samreen was lodged on **23.2.2015** at Karachi i.e more than a month earlier of the filing of routine constitution petition for protection of police against the harassment at the hands of police and private respondents.
- v. The delay of 38 days in marriage between the victim and accused No.1 Hajan is another incriminating fact as usually marriage is solemnized at the earliest once the girl left her family from her last place of residence.
- vi. The facts that the victim has refused to accept the marriage on the first ever instance available to her to disown the marriage is another incriminating fact to believe that the prosecution has sufficient material to connect the accused with serious offence.
- vii. The applicants have failed to point out any enmity or malafide on the part of the complainant to implicate present accused in the heinous crime of assisting the accused Hajan for committing an offence under **Section 365-B PPC** by kidnapping or abducting the victim Samreen by Hajan with intent to compel her to enter into marriage with Hajan.
- viii. So far the statement of victim before SDPO Mehrabpur under Section 161 Cr.P.C and then under Section 164 Cr.P.C at Karachi before the Judicial Magistrate coupled with medical report as well as factum of

recovery of victim from the custody and control of accused from Naushero Ferozare sufficient material to connect the accused with the serious offence.

4. The alleged offence is punishable for imprisonment for life and therefore, as rightly contended by the counsel for the complainant that in terms of **Section 497 Cr. P.C** the accused shall not be entitled to bail if there appears reasonable grounds for believing that they have been guilty of an offence punishable with death or imprisonment for life or imprisonment for 10 years. The learned counsel for the complainant has relied on case law reported in **2015 SCMR 1394 MUHAMMAD SADIQ and others..Vs..THE STATE** and another in support of his contention that while seeking pre-arrest bail it was the duty of the accused to establish and prove mala fide on part of the investigating agency or the complainant and satisfy the provisions of **sub-section(2) of Section 497 Cr. P.C**. In the case in hand despite repeated queries, counsel for the applicant has failed to show enmity between the complainant and the accused as the accused were not named in the FIR and they were implicated after the recovery of victim by the police on raid of the house of accused after months of enticing away of the victim from Karachi. It is the victim who has nominated the accused on **14.9.2015** by name as she was under their illegal custody for well over 6 months and not the complainant who lodged FIR on **23.2.2015**. The other case laws relied upon by the learned counsel for the complainant mentioned in para-2 above are also relevant. The consensus of the Court is that once reasonable grounds for believing that accused had been guilty of an offence punishable with death or imprisonment for life or imprisonment for 10 years shall not be released on bail unless the applicant has shown exceptional and rare circumstances for claiming the benefit of bail. The absence of previous enmity between complainant and accused or any ulterior motive to implicate the applicant can be one of the grounds for refusal of bail in rape cases as

the complainant or victim is not supposed to concoct a story which can ruined her own life.

5. I have also examined the case law relied upon by the counsel for the applicant. The citation **2003 SCJ 864** is on the point that benefit of doubt visible in prosecution case should be extended to accused at pre-arrest bail stage. It is not relevant in this case since there is hardly any visible doubt at this stage in the prosecution story as discussed in detail hereinabove. The citation **2005 P.Cr.L.J 31** is against the applicant as contrary to the facts of this case in the citation the victim herself has not supported the prosecution case, whereas in the case in hand the victim has categorically disowned the applicants and nominated them in the offence. The facts of this case are totally different and distinguishable from the present case. In the case reported in **2009 M L D 17** there was a delay of 10 days in lodging of the FIR and the accused were nominated in the FIR with the role of committing *zina-bil-jabar* in presence of the mother of the victim. The abductee / victim in the cited case has denied commission of offence by the accused party. In the case in hand the story is just reversed. These cases are not relevant to the facts of the case of the applicant and I have gone through the order of the trial Court, the trial Courts while rejecting the bail has rightly not discussed the same.

6. The cruxes of the above discussion is that the applicants are not entitled to pre-arrest bail and therefore, this bail is dismissed and interim bail granted on 16.10.2015 is recalled. Order of dismissal of bail was announced in open Court for the reasons to be recorded during the course of the day. These are the reasons for the same and if accused have not surrendered before the police voluntarily once copy of this order is received in the trial Court, appropriate action against the present applicants may be taken by trial Court in accordance with law.

The observations made hereinabove are tentative in nature and should not influence trial Court while deciding the case of the applicants/accused.

JUDGE

Karachi
Dated: _____