

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr.Misc.Appln.No.S-26 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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25-05-2017

Mr. Muhammad Jameel Ahmed, advocate for applicant.

Mr. Altaf Hussain Khokar, advocate for respondent No.1.

Mr. Shahid Ahmed Shaikh, A.P.G. a/w ASI Muhammad Bux PS Tando
Jan Muhammad Mirpurkhas.

Sht:Raju Bai (abductee) present in person.

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ABDUL MAALIK GADDI, J- Through this Criminal Miscellaneous Application under Section 497(5) r/w Section 561-A Cr.P.C filed by applicant Kirshan Lal, whereby he seeks cancellation of bail granted by learned Sessions Judge Mirpurkhas to respondent No.1 Partab Rai vide order dated 19.1.2017 in Criminal Bail Application No.59 of 2017 (Re:Partab Rai vs. the State) pertaining to crime No.57 of 2016 PS Tando Jan Muhammad for offence under section 365-B, 506/2 and 34 PPC.

2. Facts of the prosecution case in nutshell are that on 01.11.2016 complainant Kirshan Lal alongwith his nephew Anil Kumar, cousin Govind, niece Raju Bai daughter of Saroop Chand age about 15 year left for Umerkot and when reached at the otaq of Kaimkhani, one car arrived in which Partab was already known to Aneel Kumar, who offered a lift while saying that he also was going to Umerkot, upon which Aneel Kumar, Govind and Raju Bai sat in the car, two unknown persons opened the doors of the car meanwhile Partab picked out pistol from his folder and while pointing it to Aneel asked him to alight from the car and thereafter while throwing Aneel and Govind from the Car, the two unknown persons boarded in it and forcibly took away Sht:Raju Bai with

intention to commit rape. Thereafter, father of Sht:Raju Bai namely Saroop Chand and others met with the father of accused Partab namely Prem Chand for release of his daughter, who kept them on false hopes but no avail, hence this FIR.

3. Parties advocates have been heard and perused the record.

4. It is contended by the learned counsel for the applicant that the impugned order dated 19.1.2017 granting bail to the respondent No.1 (Pertab Rai) by the learned trial Court is opposed to law and facts and without considering the main ingredients of section 497 Cr.P.C; that the trial Court did not consider that the specific role has been assigned to the respondent No.1/accused in kidnapping and child marriage case as it is well settled law that when the specific role has been assigned, the accused is not entitled for concession of bail; that before granting bail the complainant has not been heard, therefore according to him the complainant has seriously prejudiced by the impugned order and the same is liable to be set aside. However during course of arguments he has also reiterated the same facts and ground which he has urged in the memo of application.

5. Learned A.P.G and learned counsel for respondent No.1 (Pertab Rai) have supported the impugned order by stating that there is 12 days delay in lodging of FIR, same could not be lost of sight, co-accused Poonam Chand and five others have already been admitted to bail, more so; Sharimati Raj Kumari alias Raju Bai, the alleged abductee has filed her affidavit before the trial Court to the effect that the FIR is false one as she has married with the accused Pertab Rai of her freewill and consent.

6. On a closed scrutiny of the material placed on file, I am of the opinion that prima facie reasonable grounds do not exist for believing that respondent No.1 has committed the offence. The reasons for granting bail to the accused are quite sufficient / convincing and the learned Sessions Judge Mirpurkhas has recorded a speaking order. In these circumstances, I do not see any justification as to why the discretion exercised by the District & Sessions Judge, Mirpurkhas be interfered with by this Court, even otherwise strong and exceptional grounds are required for cancellation of bail granted by a Court of competent jurisdiction because the provisions of section 497(5) Cr.P.C are not at all

punitive. Resultantly there is no legal compulsion even for the cancellation of the bail granted in cases which are punishable with death / life imprisonment / imprisonment for ten years.

7. Here in this case abductee Sht:Raju Bai present in Court submits that nobody has kidnapped / abducted her and she has contracted marriage with respondent No.1 (Pertab Rai) according to her choice as she is being sui-juris.

8. Additionally, the accused is not to be deprived of the benefit of bail whenever reasonable doubt arises about his participation in the crime or about the truth / probability of the prosecution case. In such a situation , it would be better to keep him on bail than in the jail during the period of the trial and the personal liberty granted to him by a Court of competent jurisdiction, through grant of bail, should not be snatched away from him unless it becomes absolutely necessary to do so under the law. In this respect I am supported by the case of Syed Amanullah Shah v. The State reported in PLD 1996 SC 241.

09. Here in this case as observed above the alleged abductee Sht.Raju Bai before the trial Court as well as this Court has submitted that nobody has kidnapped / abducted her. Under these circumstances, no exceptional ground is made out for cancellation of bail, therefore I find no merit in this Criminal Miscellaneous Application, which was dismissed by me after hearing the learned counsel for the parties in open Court in the early part of the day by short order dated 25.5.2017 and these are the detailed reasons thereof.

10. Before parting with the order, I would like to make it clear that if any observation made in this order is of tentative in nature and shall not affect the merits of the case.

JUDGE

Ahmed/Pa