

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

CrI. Bail Appln. No.5-91 of 2022.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

**01.08.2022**

Mr. Achar Khan Gabol, advocate for the applicant along with applicant.

Mr. Mujahid Ali Jatoi, advocate for the complainant.

Mr. Khalil Ahmed Maitlo, D.P.G.

SIP Hussain Ali Kharal & SIP Rustam Ali are present.

**ORDER**

**Adnan-ul-Karim Memon, J-** This is a pre-arrest bail application filed by applicant Mohammad Ramzan son of Ali Sher Jafri, in respect of F.I.R No.02/2022 registered at Police Station Khanpur, District Shikarpur, for offenses punishable under sections 302, 201, 148, 149, PPC, after the rejection of bail from the Court of learned Ist. Additional Sessions Judge/Model Criminal Trial Court, Shikarpur vide order dated.11.02.2022, on the analogy that the applicant caused his wife's, namely Muskan @ Mandam, disappearance since 4/ 5 years, and her whereabouts are unknown to the parents of the lady and the applicant is responsible.

2. Mr. Achar Khan Gabol, learned counsel for the applicant states that the present applicant has falsely been implicated in this case due to a personal grudge of the complainant; that both the witnesses of the complainant are female and her family members hence they are interested; record reveals that there is no specific date, time, place, and manner of the alleged incident mentioned in the F.I.R but the same is registered only based on assumption and presumptions; that instant incident is un-witnessed; that before this the complainant filed application u/s 491, Cr. P.C, wherein present applicant (alleged husband of detenu Mst. Muskan) appeared there and categorically denied his marriage with Mst. Muskan; that complainant has neither shown any Nikahnama of Mst. Muskan to show that she was married to the present applicant to prove that her daughter Muskan was ever married to the applicant. Learned counsel prays that the applicant has made out his case for extraordinary relief in the shape of pre-arrest which may be granted to him.

3. Learned DPG assisted by learned counsel for the complainant has opposed the bail application on the ground that the applicant has caused the

disappearance of the daughter of the complainant and his wife intentionally to cause her death in revenge, thus he is not entitled to the concession of extraordinary relief under section 498-A Cr.P.C. he further submitted that statement of Molvi who performed Nikah and attended the funeral process of the deceased lady whose whereabouts are still unknown sufficiently connects the applicant with the aforesaid crime which disentitles him to the concession of bail. he also pointed out the application filed by the complainant before the learned Additional Sessions Judge, whereby directions were issued to the concerned official to act or proceed further against the applicant and others under the law.

4. I have heard the learned counsel for the parties and perused the record and case law cited at the bar.

5. It is the case of the prosecution that on 13.01.2022 at 2000 hours complainant Mst. Sahiban lodged F.I.R in which she has alleged that 4/5 years back she got her daughter Muskan @ Mandam married to Muhammad Ramzan (applicant), they shifted from their village but the accused did not allow her to meet with her daughter Muskan @ Mandam. About a month back, she along with Mst. Ayeshan and Mst. Shahidan went to the house of Mst. Muskan @ Mandam, they saw accused Muhammad Ramzan, Ali Sher, Raban, Abdul Haque, Murad, Muhammad Ali and Nek Muhammad were available. The complainant asked about the presence of her daughter Mst. Muskan @ Mandam but the accused disclosed that she is out of the home. The complainant approached nekmards but no clue was made. The complainant then made a complaint against the accused that they have murdered her daughter and hence she lodged F.I.R to the above effect.

6. Per learned counsel the complainant filed CrI. Misc. Application No.256/2021 re-Mst. Sahiban Khatoon v. SSP Shikarpur and others, before the learned Additional Sessions Judge, Shikarpur for issuance of Rule Nisi and production of her daughter Mst. Muskan @ Mandam and it was heard and vide order dated 04.01.2022, based on the report of SHO, PS Khanpur/Incharge ASI-Ahsanullah Sethar, in which he submitted a report that the daughter of the complainant was married and residing in the house of applicant Muhammad Ramzan 4/5 years back and presently her whereabouts could not be traced on the analogy that applicant caused her disappearance.

7. This is a pre-arrest bail application under Section 498-A Cr. P.C, and would be called in aid, before this Court; and where the arrest has not been made so far but anticipatory bail is asked for, e.g., where the case is still at the stage of investigation by the police or is pending in a subordinate Court. The power to grant such anticipatory bail is extra-ordinary relief, which could only be granted in extraordinary circumstances, where, the applicant is required to show his false involvement and malafide of the complainant and /or Police. On the aforesaid proposition, I am fortified with the decision of the Hon'ble Supreme court in the case of *Gulshan Ali Solangi and others v. The State through P.G Sindh* (2020 **SCMR 249**)

8. Prima facie, there is no malafide of the complainant to lodge the FIR of the incident against the applicant. Involvement of the applicant in such a case, as discussed supra, disentitles him for extraordinary relief as provided under Section 498 Cr.P.C. Also, there is nothing placed on record by the applicant, which could show that the applicant has been falsely implicated in the aforesaid case by the complainant. However, delay perse is no ground to subvert the investigation process. The findings of the learned trial Court while rejecting the bail plea of the applicant is that he is specifically nominated in the aforesaid crime by the eye-witnesses to the effect that he caused the daughter of the complainant to disappear and he is responsible to have killed the deceased lady on a certain pretext and still her dead body has not been recovered nor her grave has been located. Prima-facie, this is a dangerous trend, in society, which needs to be curbed by the State institutions. If this is the position of the case, I do not see any reasonable justification to subvert the due process of investigation as requested by the I.O present in court and directed the applicant to surrender before the investigating officer for investigation purposes immediately.

9. In view of the above facts and circumstances of the case, the tentative view is that the applicant is not entitled to the extraordinary relief of pre-arrest bail at this stage.

10. In the light of the provision of section 498-A Cr.PC, the ad-interim pre-arrest bail order dated 28.02.2022 passed by this Court, is hereby recalled. Consequently, instant bail application stands dismissed.

11. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at the time of trial.

J U D G E