

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Cr. B.A. No. D- 551 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing.

Present:

**Mr. Justice Ghulam Sarwar Korai &
Mr. Justice Naimatullah Phulpoto.**

Mr. Rasool Bux I. Sial Advocate for applicant/accused.
Mr. Zulfiqar Ali Jatoi, DPG for the State.

Date of hearing: 08.01.2014.

ORDER

Naimatullah Phulpoto, J; Applicant/accused Abdul Ghafoor Memon seeks post arrest bail in Crime No. 84 of 2013, registered at Police Station, Mehrabpur, on 15.5.2013, under Sections 452, 395, 365-B PPC read with section 7 ATA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by one Irshad Ali are that he runs a shop at Tando Miral Ali and his son Afaq Ahmed, aged about 14 years studies in 9th class. On 12.5.2013, complainant after closing his shop returned home in the evening where PWs Niaz Hussain and Ghulam Qadir were also present at the house of complainant. After taking meal, complainant went to sleep along with PWs. On 13.5.2013 at about 0200 hours, complainant heard some commotion at the door and all family members woke up and saw eight persons standing in the house, armed with KKs, pistols and guns, their faces were opened. They aimed their weapons at the complainant party and asked them to keep quiet. Thereafter, it is alleged that accused persons took ornaments of gold and cash and licensed weapons from the house of complainant and kidnapped Afaq Ahmed, aged about 14 years for ransom.

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3. After usual investigation challan was submitted against the accused for the above referred sections.

4. Bail application was moved on behalf of applicant/accused, same was rejected by learned Judge, ATC, Naushehro Feroze vide order dated 25.9.2013. Thereafter, the applicant/accused approached this court.

5. Mr. Rasool Bux I. Sial, learned Counsel for applicant/accused mainly contended that case has proceeded before the trial court and evidence of complainant Irshad Ali, abductee Afaq Ahmed and eyewitnesses Ghulam Qadir and mashir Nazar Hussain have been recorded and they have not implicated the applicant/accused in the crime. He has argued that the prosecution case is a false one and applicant/accused is entitled for concession of bail. In support of his contentions, he relied upon the following case-law:

- i. Mohammad Moosa and others v. The State (2011 SCMR 1612).
- ii. Syed Khalid Hussain Shah v. State and another, PLJ 2013 SC 874.

6. Learned DPG opposed the application on the ground that as the case has proceeded, therefore, directions may be issued to the trial court for deciding the case expeditiously. However, learned DPG submitted that the complainant has voluntarily appeared and complainant recorded no objection to the grant of bail to the applicant/accused in the case.

7. We have perused the copies of depositions of complainant Irshad Ali, abductee Afaq Ahmed and eyewitness Ghulam Qadir and mashir Nazar Hussain. Complainant has been declared hostile as he did not implicate the applicant/accused at trial. Abductee Afaq Ahmed has also not implicated the present applicant/accused. PW Ghulam Qadir has also not supported the prosecution case to the extent of present applicant/accused and PW Nazar Huasain has also not supported the case of prosecution.

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Complainant voluntarily appeared today and recorded no objection to the grant of bail to the applicant/accused. In these circumstances, rightly reliance has been placed upon the case of Mohammad Moosa and others (supra), in which Hon'ble Supreme Court has been pleased to observe as under:

"3. It is an admitted position from the record that all the other accused nominated in the crime, except the present petitioners have been admitted to pre-arrest/post arrest bail either by the trial Court or by the High Court. Perusal of certified copies of depositions of complainant and three injured witnesses reveals that none of them has supported the prosecution story about the involvement of petitioners in the commission of crime. This being the position, possibility of malafide involvement of present petitioners in the commission of crime cannot be ruled out.

4. Accordingly, this petition is converted in to appeal and allowed. Consequently, interim pre-arrest bail granted to the petitioners, vide order dated 28.4.2011, is confirmed in the same terms as recorded in the said earlier order".

8. For the above stated reasons, in our considered view, commencement of trial, too, cannot come in the way of grant of bail, if in the opinion of the court, a case for further inquiry is made out, as held in case of Syed Khalid Hussain Shah(supra). From the depositions of complainant Irshad Ali, abductee Afaq Ahmed and eyewitness Ghulam Qadir and mashir Nazar Hussain, it appears that apparently they have not supported the prosecution story about involvement of the applicant/accused in the commission of crime. Therefore, while relying upon the above cited authorities, we hold that prima facie, a case against applicant/accused requires further enquiry, as contemplated under subsection (2) of section 497 Cr.P.C. Therefore, concession of bail is extended to the applicant/accused subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two lacs) and PR bond in the like amount to the satisfaction of trial Court.

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9. Needless to say, observations made hereinabove are tentative in nature. The trial court shall not be influenced by such observations while deciding the case on merits.

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