

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Bail Application No.S- 1186 of 2022

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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21.11.2022.

Mr. M. Saffar Khokhar, Advocate for applicant alongwith applicant (on bail).

Mr. Muhammad Noonari, D.P.G for State.

**ORDER**

**Muhammad Saleem Jessar, J.-** Through instant application, applicant Gulzar Ahmed seeks his admission on pre-arrest bail in Crime No.12 of 2022 registered at P.S Pat Gul Muhammad District Dadu under Sections 302, 311, 319, 337-H(ii), 34, 220 PPC r/w Section 155-C of Police Order (Amended 2019).

2. After registration of case, investigation was carried out and on completion of legal formalities challan was submitted before the competent Court of law. Applicant preferred Criminal Bail Application No.1562 of 2022 before the Court of Sessions, Dadu wherefrom it was assigned to Additional Sessions Judge-I / MCTC, Dadu, who after hearing the parties, declined his request to grant pre-arrest bail vide his order dated 31.10.2022 and recalled the interim order dated 18.10.2022.

3. As reported, interim challan of the case has been filed by police which is now pending for preliminary proceedings before the Court of 1<sup>st</sup> Civil Judge & Judicial Magistrate, Johi vide Criminal Case No.149 of 2022 (Re-The State v. Inspector Gulzar Ahmed Khushik and others).

4. The facts of the case are already mentioned in FIR as well as in memo of bail application hence need not to be reiterated.

5. Learned counsel for applicant submits that allegation against the applicant is that he was posted as SHO at PS Pat Gul Muhammad District Dadu where FIR No.10/2022 u/s 365-B PPC was lodged by one Abdul Hakeem on 24.02.2022, who is also complainant in this case regarding the abduction of her daughter Mst. Tahira; however, alleged abductee namely Mst. Tahira (deceased) had voluntarily appeared with Police Station Pat Gul Muhammad on 16.03.2022 and she was produced before the 1<sup>st</sup> Civil Judge & Judicial Magistrate, Johi for recording her statement u/s 164 Cr.P.C; that before producing her before the Magistrate, her 161 Cr.P.C statement was also recorded by I.O whereby she had shown her intention to go with her parents instead of her paramour; that learned Magistrate did not record her statement u/s 164 Cr.P.C on the pretext that she has already been examined by I.O u/s 161 Cr.P.C therefore, her statement u/s 164 Cr.P.C is not mandatory hence the application moved by the then SHO PS Pat Gul Muhammad (present applicant) was dismissed by Judicial Magistrate vide his order dated 16.03.2022 (Annexure 'E' Page 33 of the Court file) therefore, on an undertaking of complainant / father of deceased Mst. Tahira dated 17.03.2022 (Annexure 'G' Page 41 of the Court file) the custody of Mst. Tahira was given to her father / complainant. Meanwhile, one Muneer Ahmed Khoso alleged husband of deceased Mst. Tahira had filed a Habeas Corpus Application No.80/2022 before the Court of Sessions wherefrom it was assigned to Additional Sessions Judge-IV, Dadu, seeking her production. After hearing the parties and calling reports from the concerned, said application was disposed of by order

dated 13.04.2022 (Annexure 'K' of the Court file), whereby the learned Additional Sessions Judge-IV, Dadu had charge sheeted the applicant regarding the alleged murder of Mst. Tahira / deceased therefore, instant FIR was lodged. Learned counsel further submits that applicant has nothing to do with the alleged murder of deceased Mst. Tahira as he had handed over her custody according to her 161 Cr.P.C statement to her father on 17.03.2022 and right from 17.03.2022 to 11.04.2022 she remained with her parents / complainant where she was murdered on 11.04.2022. Learned counsel further adds that allegation against the applicant is that he did not produce the lady before the Additional Sessions Judge-IV, Dadu in connection with Heabus Corpus Application and that he negligently performed his duties which resulted the murder of deceased Mst. Tahira hence submits that applicant has committed no offence; however, has been arrayed by complainant in whose house she has been murdered by accused namely Sher Muhammad Leghari and Parial Leghari. He further submits that applicant after furnishing surety before this Court has also joined the trial proceedings hence has not misused the concession of bail. In support of his contention, learned counsel has placed on record a copy of case diary dated 12.11.2022, taken on record.

6. On the other hand, learned Deputy Prosecutor General appearing for State submits that name of applicant does not transpire in FIR; however, he has been implicated by police on the directions contained under Heabus Corpus Application vide order dated 13.04.2022 therefore, he has no objection for grant of application.

7. Heard. Record perused.

8. Admittedly, the name of applicant does not transpire in FIR nor he has been assigned any active role or had been facilitator to real culprits. The applicant being SHO had recorded the statement of deceased lady u/s 161 Cr.P.C whereby she had categorically deposed that one Muneer Ahmed Khoso and others had abducted her on force and due to fear as well coercion she had entered into Nikah with said Muneer Ahmed Khoso thereby had appeared before the Court and stated that she had entered into Nikah with Muneer Ahmed. Subsequently, she got free and appeared before the Police Station where her statement was recorded by the Investigation Officer and then was produced before the Judicial Magistrate but Judicial Magistrate refused to record her statement u/s 164 Cr.P.C. Therefore, finding no alternative her custody was handed over to her father / the complainant on 17.03.2022 and on 11.04.2022 she was murdered by accused nominated in the FIR in presence of complainant / her father. Hence findings / observations / directions issued by the Additional Sessions Judge-IV, Dadu in Heabus Corpus Application are immaterial and are not in consonance with law. As far as his accusation is concerned, same is yet to be proved by prosecution and then is to be determined by trial Court after recording evidence of prosecution witnesses. The applicant being a government servant if is declined bail and then is taken to custody, he would lose not only his liberty but also his service. The main accused against whom the allegation of causing murder of deceased Mst. Tahira is alleged in the FIR have not been arrested so far. In the circumstances and in view of above factual position, the case against applicant requires further inquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed and the interim pre-arrest bail already granted to applicant Gulzar Ahmed on 07.11.2022 is hereby

confirmed on same terms and conditions. However, applicant is directed to continue his appearance before the trial Court, without fail.

JUDGE

Tufail