

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

Cr. B. A. No. D. 03 of 2011

Cr. B. A. No. D. 61 of 2011 ✓

DATE

ORDER WITH SIGNATURE OF JUDGE

04.10.2011

Mr. Khuawaja Ayatullah Advocate for the Applicants.  
Mr. Shahzad Saleem Nahyoon Assistant Prosecutor General Sindh.  
Mr. Nisar Ahmed Unar, Advocate for Complainant.

*Ahmed Ali M. Shaikh J:* By this single order, we intend to dispose of pre-arrest Bail Applications No.D-03 and post arrest Bail Application No.D-61 of 2011 as both the applications arise out of same F.I.R.

The Applicants alongwith others have been booked in crime NO.156/2009 of P.S. Shaheed Fazil Rahu District Badin registered u/s 365-A PPC .

The contents of prosecution case in nutshell are that on 25.06.2009 between 0015 hours to 0100 hours each Khalil Ahmed 2. Murtaza and 3. Ihteshamul Haq all three sons of Complainant Muhammad Sharif alongwith their relative Ghulam Mustafa Arain were kidnapped from Atta Chaki; following which the Complainant alongwith his sons Ghulam Mustafa and Itikhar tried to trace out their whereabouts. However, during search, they found a chapple of one of the abductees near place of occurrence and also observed foot prints of some people. Instead of approaching the police, the Complainant party tried to trace out whereabouts of the abductees, meanwhile they received phone calls whereby they were threatened that if F.I.R. is lodged, the abductees will be murdered. Due to such threats, they did not lodge the F.I.R. promptly. Subsequently Muhammad Nazeer and Muhammad Ismail disclosed that abductees have been abducted by accused Itikhar Ahmed, Zulfiqar Ali, Muhammad Arif Sindhu and Muhammad Ashfaq Arain. Later on the Complainant again received similar threats through cell No.0301-2981217, ultimately Complainant appeared at P.S. on 25-09-2009 and

lodged F.I.R. that due to enmity over plot, his sons and relative Ghulam Mustafa Arain have been abducted by the aforesaid accused for ransom purpose.

Mr. Ayatullah Khuwaja learned Counsel for the Applicants contended that the F.I.R. is belated by three months without any plausible explanation; 164 and 161 Cr.P.C statements of the abductees were also recorded on 19.10.2009 which creates doubt about their truthfulness, 161 Cr. P.C statements of the abductees are verbatim of their 164 Cr.P.C statements, which is against the normal human conduct. Per learned Counsel the police has not examined the tractor driver, who was an important witness and was present at the place of occurrence. He further contended that after this F.I.R. another case under crime No.12/2009 was registered at P.S. Korai District Naushero Feroz in which present Applicants have been nominated. He further contended that prosecution story and the conduct of the Complainant do not inspire confidence as the F.I.R. has been lodged with inordinate delay and further statement of the complainant also creates doubt about the prosecution case particularly with regard to the actual culprits. He lastly contended that trial is not in progress and two P.Ws have been examined and at this stage interim bail of Applicant Muhammad Arif be confirmed and the Applicants Zulfiqar Ali, Iftikhar Ahmed, Ashfaq Ahmed may be admitted to bail as their case requires further inquiry. In support of his contentions, learned Counsel has relied upon the case of *Rehmatullah Vs. The State* (2011 SCMR 1332), *Sikander Ali Vs. The State* (2003 YLR 2160), *Ali Gul Vs. The State* (2003 P Cr. L J 980) and *Rahat Ali Vs. The State* (2010 SCMR 584).

On the other hand, Mr. Shahzad Saleem Nahyoon Assistant Prosecutor General Sindh for the State opposed the bail applications and contended that the names of the Applicants transpire in the F.I.R. The abductees in their 161 and 164 Cr.P.C statements have also implicated the Applicants/accused to be culprits of the crime. He further contended that during captivity one of the abductees namely Khalil Ahmed was murdered by the culprits, therefore, the applicants do not deserve concession of pre arrest and post arrest bail respectively.

Mr. Nisar Ahmed Unar learned Counsel for the Complainant adopted the same arguments as advanced by the learned Assistant Prosecutor General Sindh.

Perusal of record reflects that names of the Applicants transpire in the F.I.R. As far as the delay in lodging the F.I.R. is concerned, same has plausibly been explained by the Complainant as after such unhappy incident whereby Complainant's three sons and a relative were abducted, he was only concerned with safe recovery/release of his beloved sons and relative, therefore, under such circumstances delay was but natural. Record further reflects that after their release, the abductees got recorded their 161 and 164 Cr.P.C statements and implicated the applicants. Apart from this, there is another aspect of the case that during their captivity, one of the abductees namely Khalil Ahmed lost his life at the hands of culprits and in this respect a case under crime No.12/2009 u/s 302, 201, 34 PPC was registered at P.S Korai District Naushero Feroze and the present Applicants are also nominated in the said murder case. The Applicants/accused are charged for offence punishable u/s 365-A PPC, which is punishable with death or imprisonment for life as such falls within the prohibitory clause of section 497(1) Cr.P.C and the prosecution has collected sufficient material connecting them with the commission of offence, therefore, Applicants are not entitled for bail.

So far as the concession of pre arrest bail to Applicant Muhammad Arif is concerned, in the case of *Rana Muhammad Arshad Vs. Muhammad Rafique* and another (PLD 2009 SC 427) the Honourable apex court has laid down guide line in respect of grant of bail before arrest. In the above case, it is held by their lordships that the grant of bail before arrest is an extra ordinary relief to be granted only in extra ordinary situation to protect innocent persons against victimization through abuse of process of law with ulterior motives and pre arrest bail not to be used as a substitute or alternate of post arrest bail. It is further held that the person seeking bail must satisfy the court that his case falls under subsection 2 of section 497

Cr.P.C and further he has to show that his arrest was being sought for ulterior



motives particularly on the part of police. In absence of above conditions, such relief cannot be granted to the applicant.

In the case of Rehmatullah (supra) bail granted to the petitioner in a murder case was cancelled by the High Court. It was held that when trial was at the verge of conclusion and only one or two witnesses were yet to be examined, the courts should not grant or cancel bail. Consequently bail granting order passed by the Honourable Supreme Court was confirmed. Whereas this is case of abduction and only two P.Ws have been examined and number of witnesses are yet to be examined, thus the same is not applicable in the present case. In Sikander Ali and Muhammad Rafique's cases (supra), accused was granted bail in a murder case and the same have no nexus with the case in hand. In Rahat Ali's case supra, accused was convicted u/s 364(b), 302 PPC to imprisonment for life by the trial Court. On appeal, the High Court maintained the conviction and sentence of the accused u/s 364 PPC but acquitted him from charge u/s 302(b) PPC, which Judgment was assailed before the Honourable Supreme Court. With profound respect, said case is not helpful to the applicants/accused even at bail stage.

For the foregoing reasons, we did not find any merit in the instant bail applications, which were accordingly dismissed vide a short order dated 04-10-2011. Consequently order dated 28.10.2010 whereby Applicant Muhammad Arif was granted interim pre arrest bail stands recalled.



JUDGE



JUDGE

Dated: 10-10-2011.

A.K-