

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

Cr. Bail Appl. No.D-22 OF 2011.

DATE

ORDER WITH SIGNATURE OF JUDGE

25.08.2011.

Syed Tarique Ahmed Shah Advocate for the Applicant
Mr. Meeral Shah Deputy Prosecutor General Sindh for the State.

Ahmed Ali M. Shaikh J: Through instant application, Applicant has sought bail in crime No.157/2008 registered at P.S. Kazi Ahmed for offence punishable u/s 365-A, 395 PPC, 6/7 Anti Terrorism Act, 1997.

The applicant approached the trial court for bail but could not succeed as his bail application was turned down by the trial court through impugned order dated 29.04.2010.

Brief facts giving rise to this application are that on 27.09.2008, complainant Asif Ali set the law into motion through FIR No.157/2008 stating therein that his brother Amjad Ali is a veterinary Doctor and running his clinic at cattle "Pirri". On 08.09.2008 at 2.00 p.m his brother informed him that he has received a telephonic call from the Khosas, who are residing behind Jam Cotton Factory, for treatment of their cattle and he left for village Khosa. After 2/3 hours complainant contacted his brother through mobile phone but could not get response as phone was powered off. Complainant suspected some foul play, on which he alongwith Haji Rafique Arain, Manzoor Baladi, Ashfaq Arain and Waheed Gujar proceeded towards Khosa village. However, when they reached near Banana orchard of Sardar Jam Tamachi adjacent to Cotton Factory, they saw fresh foot prints of 5/6 persons and wheel marks of the car as well as marks of dragging the motorcycle. Complainant party tried to locate Amjad Ali but could not succeed but found medicine bag of Amjad Ali, following which the complainant suspected that his brother might has been kidnapped for ransom purpose.

Complainant party kept on searching the abductee but could not get any clue and ultimately complainant appeared at P.S. and lodged the report.

We have heard Syed Tarique Ahmed Shah learned counsel for the applicant and Syed Meeral Shah D.P.G for the State.

Learned counsel for the applicant contended that the prosecution story from very face of it seems to be false, fabricated and does not attract the prudent mind; the applicant is innocent and has nothing to do with the alleged offence; FIR is belated by 19 days without any explanation. Learned counsel further contended that according to 164 Cr.P.C statement of the abductee he was released before lodging the FIR and after his release he disclosed the names of the culprits to his brother but the complainant did not nominate any of the culprits in the FIR nor any identification parade was arranged. He further went on to say that the prosecution lacks the evidence in respect of payment of ransom amount to the culprits, therefore, ingredients of section 365-A PPC are not attracted and the applicability of above section will be determined at trial stage. Per learned counsel 164 Cr.P.C statement of the abductee was recorded after 3 months, therefore, same cannot be relied upon. He lastly contended that the investigation of the case was conducted with malafide as the FIR was lodged on 27.09.2008 whereas memo of place of incident was prepared on 11.09.2008 and further statement of complainant was recorded on 20.10.2008 and even in his subsequent statement he did not nominate the present applicant as one of the culprits. While concluding his arguments he submitted that during investigation no incriminating article was recovered from the present applicant.

Conversely Syed Meeral Shah learned Deputy Prosecutor General Sindh for the State opposed the bail application but could not controvert the contentions raised by the learned counsel for the applicant.

We have heard learned counsel for the applicant/accused, learned State counsel and with their able assistance perused the material available on record.

Admittedly the abductee Amjad Ali was kidnapped on 08.09.2008 whereas the FIR was lodged on 27.09.2008. Though the FIR was lodged with delay of 19 days but in like nature cases such delay can be overlooked because under such circumstances the complainant party's concern relates to the safe recovery of the abductee. However, upon a perusal of 164 Cr. P.C. statement of abductee Amjad Ali, it appears that after

his release from the clutches of the culprits, he met his brother, complainant Asif Ali and apprised him about the facts of the incident including names of the accused persons but it is very strange that none amongst the accused have been nominated in the FIR though the complainant as well as abductee were aware of their names. From 164 Cr.P.C statement of the abductee and further statement of complainant it is revealed that after his release from the captivity of his captors the abductee met his brother, narrated the entire episode to him and thereafter left for Punjab and after about 3 months he came back and got recorded his 164 Cr.P.C statement. Such belated 164 Cr.P.C statement creates doubt about its truthfulness. Apart from above, the further statement of the complainant was also recorded on 20.10.2008 after 23 days of registration of FIR. Besides above, during course of investigation no incriminating article, connecting the applicant with the commission of offence, was recovered from the applicant. It is a settled principle of law that further/ subsequent statement of complainant cannot be equated with FIR and such statement does not carry the same weight like FIR and at the most same can be treated as 161 Cr.P.C statement. Since the name of the applicant did not appear in the FIR and after his arrest I.O. ought to have produced the applicant before the concerned Magistrate for identification parade but due to reasons best known to I.O. neither identification parade was arranged nor he moved any application before the concerned Magistrate for said purpose. Since name of the applicant did not appear in the FIR nor his identification parade was held before the Magistrate and the only evidence against the present applicant is 164 Cr.P.C statement of abductee which was recorded after three months after his release, therefore, reasonable doubt about the involvement of the applicant/accused in the offence is created. Moreover it has been repeatedly held that further statement of the complainant is of no evidentiary value. In case of *Mubashir Nadeem Vs. The State (P Cr. L J 1981)* the accused were granted bail in a murder case on the ground that he was not nominated in the FIR but on the following day, complainant implicated him through his supplementary statement and nominated him as one of the murderers of his brother. In case of *Noor Muhammad Vs. The State (2008 SCMR 1556)*, the accused was granted bail by apex court on the ground he was not nominated in the FIR but on the same day complainant implicated him through his supplementary statement. Apart from this, neither ransom amount was recovered from the applicant/accused nor was

any incriminating article secured to show his nexus with the alleged offence. *In case of Ali Gul Vs. The State (2003 SCMR 201)* the accused was granted bail on the ground that the FIR was lodged with a delay of 20 hours and the alleged abductee who came back to his home on 13.05.2001 remained mum till 6.11.2001 when his 161 and 164 Cr.P.C statements were recorded.

For the foregoing reasons and dictum laid down by their lordship in the above referred cases, we are of the considered view that the case of the applicant falls within the ambit of further inquiry as reasonable doubt exists that applicant has committed an offence punishable with death, imprisonment for life or 10 years. We, are, therefore, of the considered opinion that he is entitled to bail. We had vide our short order passed in court on 25.08.2011 after hearing the learned counsel admitted the applicant to bail subject to furnishing two solvent sureties of Rs. 200,000/- each alongwith P.R bonds of like amount to the satisfaction of the trial court. The above are the reasons in support of our short order.

Before parting with this order, we would like to make it clear that the observations made in this order are tentative in nature and would not prejudice the case of either party and the trial court would decide the case on its own merits.

Cr. Bail Application stands disposed of.

May be sent to Trial Court for file.
At the Court
 JUDGE

[Signature]
 JUDGE

A.K