

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-228 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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27.03.2023

For orders on office objection.
For hearing of main case.

Mr. Saqib Kalhoro, advocate for the applicants.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Niaz Ahmed and Muhammad Rafaqat seek post-arrest bail in Crime No.15/2023, registered at Police Station Jamshoro for the offence under sections 365-B, 34 PPC. Earlier the bail plea of the applicants/accused was declined by the learned Additional Sessions Judge-II, Kotri vide order dated 22.02.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants has mainly argued that the applicants/accused are innocent and have falsely been implicated in this case; that the FIR registered by the complainant stating that in presence of family members, his daughter namely Mst. Kavita was abducted by one Mumtazul Haq along with both the applicants; however, the alleged abductee appeared before the learned Judicial Magistrate 1st Class, Rawalpindi and got recorded her statement, wherein she has stated that she has contracted marriage out of her freewill and wishes with one Mumtazul Haq, therefore, no case of alleged abduction is made out. In support of his contentions, learned counsel places on record certified copies of such statement and other relevant documents. Learned counsel further submits that applicants/accused are in jail and they are no more required for further investigation. According to him this is a fit case for further inquiry and prays for grant of bail to the applicants/accused.

4. On the other hand, learned A.P.G. Sindh opposes the bail application

5. Heard and perused the record. As per claim of the complainant, on the day of incident viz. 18.01.2023 after taking dinner, the complainant party was present in their house, accused Mumtazul Haq along with both the

applicants kidnapped Mst. Kavita alias Mst. Saira Jan d/o Mukhtiar Ali and taken away her to unknown place. On the other hand, learned counsel for the applicants has produced certified documents through statement i.e. Nikahnama, affidavit, statement under section 164 Cr.P.C. etc. It transpires the alleged abductee Mst. Saira Jan alias Kavita was produced before learned Judicial Magistrate 1st Class, Rawalpindi where her statement under section 164 Cr.P.C. was recorded. In her statement, she has categorically stated that on 18th January she left her house out of her wishes, came at Rawalpindi and contracted marriage to Mumtazul Haq with her own freewill. She has further stated that no one has kidnapped her.

6. In view of the above facts and circumstances and in the light of statement of alleged abductee recorded by learned Magistrate, the case of applicants/accused falls within the ambit of further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicants/accused are admitted to post-arrest bail, subject to their furnishing a solvent surety in the sum of Rs.1,00,000.00 (Rupees one hundred thousand only) each and PR bond in the like amount to the satisfaction of learned trial Court.

7. It is made clear that if the applicants after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicants become absconders and fugitive to law, then the trial Court is fully competent to take every action against the applicants/accused and their surety[-ies] including cancellation of bail without referring to this Court.

JUDGE