

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Bail Application No.1649 of 2023

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<b>Date</b>	<b>Order with signature of Judge</b>
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For hearing of bail application

**18.8.2023**

Mr. Muhammad Arif advocate for the applicant  
Mr. Muhammad Asghar advocate for the complainant alongwith  
complainant Mst. Salma Bibi  
Mr. Zahoor Shah, Additional PG  
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Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.874/2022, registered under Section 365-B/34 PPC at Police Station Steel Town. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge-V (Malir) Karachi vide order dated 24.06.2013 in Cr. Bail Application No. 2110/2023 on the ground that the abductee has not been recovered.

2. The accusation against the applicant is that on 12.12.2022 he abducted Mst. Nida the daughter of the complainant aged about 17 years, and her whereabouts are still unknown. Such report of the incident was given to the Police Station Steel Town, who registered F.I.R No.874/2022, registered under Section 365-B/34 PPC. During the investigation, the investigation officer recommended the case under A-Class. Such order on the report under Section 173 Cr. P.C. is still awaited.

3. The applicant being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicant has been falsely implicated in the case; that the applicant was arrested by the police on 25.12.2022 in the above-mentioned crime and thereafter on 26.12.2022 he was released by the investigation officer on bail but on the same day, the police again arrested and detained him at the same police station without showing his arrest in the above-mentioned crime and thereafter on 29.12.2022 the police showed his arrest of the applicant. Learned counsel further submitted that there is no single iota of evidence against the applicant that he is connected with the alleged crime however the complainant in connivance with the police has booked the applicant on the presumption that he abducted her daughter however the complainant failed to substantiate her allegations during the investigation and only insisted that her daughter be recovered from the

hands of the applicant which is apathy on the part of complainant and police. Learned counsel further submitted that the Prosecution has failed to collect tangible evidence to connect the applicant with the commission of the crime and recommended the case to be disposed of under A-Class which factum falls within the ambit of further inquiry as envisaged under Section 497(2) CR.P.C. He further submitted that as regards the offenses punishable by death sentence or imprisonment for life or imprisonment for ten (10) years, the question of grant or refusal of bail is to be determined judiciously having regard to the facts and circumstances of each case as well as the principles set forth by the Supreme Court in its various pronouncements. He has also submitted that the prosecution has failed to substantiate that there are reasonable grounds to believe that the applicant has committed an offense falling in the category of Prohibitory Clauses, however, the post-arrest bail has wrongly been refused by the learned Trial Court in deviation of law on the subject. He, however, submitted that the learned trial Court while deciding the bail application went into a deeper appreciation of evidence and the circumstances as spelled out in the case were neither desirable nor permissible at the bail stage. He further submitted that the learned trial Court was under a legal obligation to consider all the attending facts and circumstances before refusing bail to the applicant. He has also submitted that in such cases even the offense does fall within the Prohibitory Clause of Section 497 Cr. P.C., the bail has been allowed to the accused person from time to time. He added that because of all the attending circumstances, even the fact of delay in lodging the F.I.R. has not been explained and this factum was not taken into consideration by the learned trial Court while refusing him post-arrest bail. He prayed for allowing the instant bail application. He lastly prayed for allowing the bail application to the applicant.

4. On the contrary, learned APG assisted by the learned counsel for the complainant has argued that there was no malafide on the part of the complainant. He next argued that the abductee has not yet been recovered which is still in the custody of the applicant and he is not ready and willing to produce her. He further submitted that the applicant has admitted his guilt by calling the complainant her cell phone with the narration that he took away Nadia in a car and thereafter put up his cell phone off and such report of the incident was lodged with the police on 24.12.2022 and till the recovery of her daughter, the applicant is not entitled to be released on bail. He lastly prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. Section 365-B P.P.C signifies the carrying away of a woman by any means with the aim that she may be compelled to marriage or forced or made to illicit intercourse, against her will. The plain reading of the section indicates two main components and ingredients of the offense, firstly, there must be kidnapping or abduction of a woman, and secondly, the first act of abduction and kidnapping must be with the intent that she may be compelled to marriage or be forced or seduced to illicit intercourse.

7. In the present case, the prosecution itself has two versions vis-à-vis the complainant party according to which the applicant abducted her daughter, and second of the investigating agency according to which the case against the applicant has been recommended under A-Class. All these considerations surely render the case against the applicant one of further inquiry into his guilt.

8. Tentative assessment of the record reflects the following of the case:-

- a. *The alleged offense took place on 12.12.2022 and was reported on 24.12.2022 after a delay of approximately 12 days.*
- b. *The Investigating officer has disposed of the case under A-Class and the final order on such recommendation under Section 173 Cr. P.C. is awaited.*
- c. *Applicant was prima facie initially arrested by Police on 20.12.2021 and released under Section 497 Cr. P.C., however, his second-time arrest has been shown on 29.12.2022 without justifiable reason.*
- d. *The prosecution has failed to recover any material from his custody.*
- e. *The Investigating officer has failed to obtain any incredible information from the applicant during interrogation.*
- f. *The CDR of the cell phone of the applicant does not disclose the call from the cell phone of the applicant to the cell phone of the complainant as alleged by the complainant in the FIR.*

9. It is important to note that the Supreme Court in its recent pronouncement has held that the courts below have not been exercising their discretion while declining bail to the accused, under subsection (1) of Section 497 Cr. P.C., under the principle of law enunciated by the Honorable Supreme Court regarding the grant of bail in offenses not falling within the prohibitory clause of that sub-section. It is further held

that the learned courts below simply relied, for declining bail, on the incriminating material available on the record to connect the accused with the commission of the offenses alleged. Though it is well-settled law that if the offenses alleged against the accused do not fall within the prohibitory clause of subsection (1) of Section 497 Cr. P.C and thus attract the principle that grant of bail in such offenses is a rule and refusal an exception; and, as authoritatively enunciated by the Honorable Supreme Court in its several cases.

10. The delay in criminal cases, particularly when it is unexplained, always presumes to be fatal for the prosecution. Besides, the delay of 12 days in lodging the FIR is also one of the grounds for bail and this is the reason the applicant has attributed malafide on the part of the police and the complainant. As per the report of the Investigating officer, the mental condition of the applicant is precarious, in such circumstances, the case of the applicant requires further probe into his guilt in the aforesaid crime which shall be finally determined by the trial Court if case proceeds.

11. Besides the above the main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society if there is an apprehension of repetition of offense or commission of any other untoward act by the accused. Therefore, to make the case of an accused person fall under the exception to the rule of the grant of bail in offenses not covered by the prohibitory clause of Section 497 (1) Cr. P.C., the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail.

12. The basic principle in bail matters in such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of:

- (a) *his absconding to escape trial;*
- (b) *his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or*
- (c) *his repeating the offense keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offense alleged.*

13. In view of the above, it is also essential to note that a court that deals with an application for a grant of bail in an offense not falling within

the prohibitory clause of Section 497(1) Cr. P.C must apply its judicious mind to the facts and circumstances of the case and the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offense only when it finds any of the above-noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle.

14. The Supreme Court has already cautioned the learned courts below in Muhammad Tanveer v. State **PLD 2017 SC 733**, in the following terms:

*"Once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception, then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding [under Article 189] on all Courts throughout the country including the Special Tribunals and Special Courts."*

15. In the present case, the learned trial Court has failed to adhere to the principle of law enunciated by the Supreme Court in terms of Article 189 of the Constitution, as discussed supra, for the exercise of discretion to grant bail to the accused.

16. In the light of the principles set forth by the Supreme Court in post-arrest bail matters, as discussed supra, the impugned order passed by the learned trial Court is thus not sustainable under the law and liable to be reversed on the aforesaid analogy. On the aforesaid proposition, I am fortified with the decisions of the Honorable Supreme Court rendered in the cases of Tariq Bashir v. State **PLD 1995 SC 34**; Imtiaz Ahmad v. State **PLD 1997 SC 545**; Subhan Khan v. State **2002 SCMR 1797**; Zafar Iqbal v. Muhammad Anwar **2009 SCMR 1488**.

17. During arguments the learned APG pointed out that in compliance with the order dated 15.6.2023 and 17.8.2023, he attempted to call Investigating Officer of PS Steel Town Malir Karachi to attend the proceedings and SSP (Investigation-II) East Zone Karachi concerned was also called upon to procure the attendance of the Investigating Officer, however, both failed to respond, compelling him to intimate this Court about their conduct towards Court. If this is the conduct of the Investigating Officer and SSP concerned, the Inspector General of Police Sindh is directed to take prompt disciplinary action against the concerned officer and also see whether SSP concerned has failed to perform his duty so assigned to him under the law and his attitude towards the Court of law and prosecution department. He shall also ensure that in future no such

untoward incident may take place. I have also gone through the police papers and I am of the tentative view that FIR No.874/2022 registered for offences under Section 365-B/34 PPC of PS Steel Town Karachi district Malir needs to be further investigated as the police has disposed of the case under 'A' class. The I.G. Police Sindh shall assign the further investigation of the subject crime to an honest and God-fearing officer, not below the rank of DSP and such further investigation report shall be submitted to the competent Court of law for appropriate order.

18. Keeping in view the facts and circumstances narrated above and the law on the subject, as well as the report submitted by the Investigating officer under A-Class, I am of the tentative view that the case of the applicant is of further inquiry, fully covered by Section 497(2) Cr. P.C. entitling the applicant for the concession of post-arrest bail.

19. In view of what has been discussed above, this application is allowed and the applicant is admitted to post-arrest bail in F.I.R No.874/2022, registered under Section 365-B/34 PPC at Police Station Steel Town, provided he furnishes bail bonds to the tune of Rs.100,000/- (Rupees one hundred thousand only) and PR Bond in the like amount to the satisfaction of learned trial Court.

20. The observation made hereinabove is tentative which shall not prejudice the case of either party at trial if the case proceeds under the law.

21. Let a copy of this order be transmitted to the Prosecutor General Sindh and the Inspector General of Police Sindh for compliance.

JUDGE

Shahzad/\*