

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1294 of 2023

Applicant : Ghulam Mustafa S/o Haji Ahmed Mian
Through Mr. Aurangzaib Khan, Advocate

Complainant : Asif S/o Ghulam Muhammad
Through Mr. Basam Ali Dahri, Advocate

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. Prosecutor General, Sindh

Date of hearing : 15.08.2023

Date of order : 15.08.2023

ORDER

AMJAD ALI SAHITO, J – Through the instant bail application, applicant/accused seeks pre-arrest bail in FIR No.07/2023 U/s 365-B PPC at PS Kalakot, after his bail has been declined by the learned Additional Sessions Judge-III, Karachi South vide order dated 12.06.2023.

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

3. Per learned counsel, the applicant/accused is innocent and has falsely been implicated in this case; that the applicant being Molvi has only got the Nikah of spouse performed, otherwise he has not committed any offence; that age of the alleged abductee Jawariya was written as 18 years in the affidavit of freewill, as such, no reason whatsoever to implicate the present applicant in the commission of offence; that co-accused has already been granted bail; that the offence in which the applicant has been booked does not fall within the prohibitory clause. He lastly prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant submits that he has just been assigned this case; however, he

vehemently opposes for confirmation of bail on the ground that the cases of marriage of minor girls are increasing day by day in our society. Whereas, learned Addl. P.G. half-heartedly opposes for confirmation of bail.

5. Heard the parties and perused the material available on record.

6. Admittedly, the offence in which the applicant has been charged does not come under the prohibitory clause of Section 497 Cr.P.C., grant of bail is a rule and refusal is an exception. However, exception has not been urged by the learned counsel for the complainant which is a ground to dismiss the bail plea of the applicant. The only role assigned against the applicant is that he being Molvi got the Nikah of the spouse offered, otherwise he has not committed any offence. The affidavit of freewill which is available at Page-47 in the file shows that the age of the girl is about 18 years. However, all these aspects will be determined at the time of trial when the evidence will be recorded. At bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible.

7. In view of the above stated position, learned counsel for the applicant has made out a case for grant of bail in terms of subsection 2 of Section 497 Cr.P.C. Resultantly, the instant bail application is allowed. The pre-arrest bail granted to the applicant vide order dated 16.06.2023 is hereby confirmed on the same terms and conditions. Applicant/accused is directed to attend the trial as and when required. However, it is made clear that if the applicant/accused misuses the concession of bail, learned trial Court would be at liberty to take appropriate action.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA