

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 448 of 2024

<i>Date</i>	<i>Order with Signature of Judge</i>
Applicant:	Muhammad Ismail (present on bail), through Mr. Ghulam Murtaza, Advocate.
The State:	Through Mr. Shoaib Safdar, Assistant Prosecutor General, Sindh.
Complainant:	through Mr. Muhammad Nawaz, Advocate.
Date of hearing:	24.05.2024.
Date of order:	24.05.2024.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Muhammad Ismail seeks his admission on pre-arrest bail in Crime No. 32/2024 of Police Station Gulistan-e-Johar, Karachi, under Section 496-A & 34 PPC. As reported, case has been challaned, which is now pending for trial before the Court of 7th Addl. Sessions Judge, Karachi (East). The applicant preferred his anticipatory bail before the Court of Sessions, which was assigned to 7th Addl. Sessions Judge, Karachi (East), who after hearing the parties, has turned down his request through order dated 17.02.2024. Hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that daughter of the complainant was married to the applicant and later due to matrimonial affairs, she got divorce by way of Khulla in terms of order dated 13.12.2023 passed by learned Family Judge, Karachi (East) vide Family Suit No.4434 of 2023; hence, in order to malign his reputation, he has maintained this FIR. Next submits that the offence with which applicant has been charged, carries maximum punishment up to seven years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C; besides, case has been challaned which is also pending for trial before the

Court having jurisdiction. In support of his contention, learned counsel places reliance upon the case of *GHULAM ABBAS ABRO Versus The STATE (2018 P.Cr.L.J Note 168)* and prays for grant of bail.

4. Learned Addl. P.G, Sindh appearing for the State, though opposes the bail application; however, could not controvert the fact that maximum punishment provided by the law for the offence under Section 496-A PPC is upto seven years; besides, the case has been challaned where accused has joined trial.

5. Learned counsel for the complainant files a copy of order dated 13.12.2023 along with decree, a copy of Nikahnama and copy of 164 Cr.P.C statement, under the cover of his statement dated 24.05.2024, taken on record. He submits that it was second marriage of the applicant with daughter of the complainant and at the time of second Nikkah, applicant had mentioned in the Nikkahnama to be virgin, though it was in his knowledge that she was already married to him before the divorce; hence, the applicant has not come with his clean hands, therefore, bail granted to the applicant may be recalled.

6. **Heard arguments and perused record.** Admittedly, the alleged victim girl Eram Yasmeen was married wife of the applicant and later due to matrimonial affairs, they got separation; however, she again joined with the applicant by performing second Nikkah with him. Per FIR, alleged abductee had disappeared from Bazar and later complainant came to know that she had been abducted by her previous husband i.e. the applicant. It is astonishing to note that applicant allegedly had taken away the victim by force and against her will from Bazar but she did not even raise her voice nor made any hue and cry, even the relatives-cum-alleged witnesses who were allegedly accompanying her at the time of her disappearance from Bazar, had remained mum and no plausible explanation for remaining quiet and calm has been furnished by the prosecution. Later, she entered into second Nikkah with the applicant by joining hands with the applicant as his wedded wife. On return to Karachi, alleged victim by taking chance had joined hands of her parents and then appeared before the Magistrate for recording her 164 Cr.P.C statement on 20.01.2024.

7. Since, the Nikkahnama produced by learned counsel for the complainant through statement dated 24.05.2024 reveals victim girl had not only signed it at the time of Nikkah before the Nikkah Registrar but she also put her RTI below the signature in presence of the witnesses mentioned in the Nikkahnama. This fact has not been denied by alleged abductee in her statement under Section 164 Cr.P.C nor she got dissolution of such Nikkah/marriage by filing any suit before the Court of law having jurisdiction. Hence, Nikkah between spouse i.e. the applicant and victim girl is still in existence and is intact. Therefore, in view of

above factual-cum-legal position of record, case against applicant requires further probe.

8. Though the relatives of her family, who allegedly were accompanied with her at the time of her disappearance from Bazar, yet the complainant had got instant case registered with a delay of one day without furnishing any plausible explanation. The delay so occasioned in lodgment of FIR shows it has been registered after due deliberation. The 164 Cr.P.C statement was recorded at belated stage, hence, it cannot be termed to be voluntarily rather it could be presumed to be under coercion. Since, there is documentary evidence which is yet to be adduced by the prosecution before the trial Court and the trial Court after recording evidence has to determine the accusation against the applicant in view of their previous relationship as husband and wife; hence, the contention so raised by learned counsel for the applicant that after joining hands of her family, victim appeared before the Magistrate and she under coercion, has stated contrary to the earlier view taken by her in affidavit as well as Nikahnama, carries weight. In the circumstances, question of her abduction is yet to be established by the prosecution. Since the alleged girl/abductee has given two versions and which one is correct version is yet to be determined by the trial Court after recording evidence of the prosecution. The offence with which applicant has been charged, carries maximum punishment up to seven years, thus does not exceed limits of prohibitory clause of section 497(i) Cr.P.C.

9. In the circumstances and in view of observation made under the case of *GHULAM ABBAS ABRO (supra)* and in view of dicta laid down by the Apex Court in case of *MUHAMMAD TANVEER Versus The STATE (PLD 2017 SC 733)*, case against applicant requires further inquiry within meaning of subsection (2) to section 497 Cr.P.C. As far as, present application is concerned, since the applicant and daughter of the complainant are husband and wife and Nikahnama was solemnized/performed by them has not been dissolved, therefore, malafide on the part of prosecution due to previous grudge over matrimonial affairs is in existence and shows malice on the part of prosecution. Therefore, basic ingredients for grant of pre-arrest bail, as has been laid down by the Honourable Supreme Court of Pakistan in case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*, are fully attracted in instant case, which entitled the applicant for grant of anticipatory bail. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Mohammad Ismail son of Muhammad Israr** on 22.02.2024 is hereby confirmed on same terms and conditions.

10. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the

concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC.

11. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A