

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Cr. Bail Application No. S - 376 of 2024

Applicant : Chakar S/o Nawab, through  
Mr. Rab Dino Makwal, Advocate.

Respondent : The State through  
Mr. Shafi Muhammad Mahar,  
Deputy Prosecutor General.

Date of hearing : 30.07.2024

Date of decision : 30.07.2024

### ORDER

ADNAN-UL-KARIM MEMON, J. - The applicant Chakar has filed this criminal bail application under Section 497, Cr. P.C, in Crime No.66/2024, registered for offenses under Sections 365-B, 382, 337-H(2), PPC at Police Station Tando Masti Khan.

2. His earlier bail plea has been declined by the Additional Sessions Judge-IV / Special / Gender Based Violence Court, Khairpur in Criminal Bail Application No.1377/2024 with the analogy that there is sufficient material available on record to connect the applicant with the commission of the alleged offense, which falls within the prohibitory clause of Section 497, Cr.P.C.

3. Notice has been served upon the complainant, but he is called absent without intimation. The complainant has premised his case on the plea that the applicant/accused is specifically nominated in the FIR with his role that he along with co-accused persons being armed with deadly weapons and in furtherance of their common object, took away 1 ½ tola gold ornaments, cash of Rs.30,000/- and also forcibly abducted Miss Iram (daughter of the complainant) to solemnize her marriage against her wishes as abductee is minor born on 01.06.2012. Moreover, the delay in the registration of FIR is satisfactorily explained in the FIR and the PWs have fully supported the version of the complainant in their statements u/s 161

Cr.P.C. So far as the ground of filing Constitution Petition by the alleged abductee is concerned, it is pertinent to mention here that according to the progress report of investigation submitted by I.O, the alleged abductee so also stolen gold and cash have not been recovered yet.

4. Learned counsel for the applicant has submitted that the complainant has falsely implicated the applicant in this case due to a previous matrimonial dispute; and that there is a delay of about two months in the registration of FIR without any plausible explanation. He further argued that the alleged abductee had contracted marriage with co-accused Irfan Ali with her wish and will and they jointly filed a C.P No.D-2031/2024 before this court seeking protection. Counsel submitted that the marriage of the abductee with Irfan Ali is still intact as per Nikahnama. He also submitted that the Prosecution has failed to collect tangible evidence to connect the applicant with the commission of the crime as discussed supra. 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 has further submitted that the applicant was arrested in the subject FIR earlier, however, the girl namely Iram along with her husband appeared before a learned Division Bench of this Court at Karachi in C. P. No. D-2031/2024, and this Court vide order dated 02.05.2024, directed the Investigating Officer not to arrest any of the accused nominated in the aforementioned FIR till the next date of hearing, and the matter is still pending adjudication before this Court. Learned Counsel further states that in the intervening period, the victim girl was taken away by her parents, and as such an FIR was registered against them. He prayed for allowing the instant bail application.

5. Learned DPG has supported the order passed by the learned trial court, whereby post-arrest bail was denied to him. He prayed for the dismissal of the instant bail application.

6. Arguments of the parties present in court have been heard at some length, record perused.

7. Primarily, 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 marry 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.

8. Since the victim girl appeared before this Court and obtained protection, therefore, this Court is left with no option but to ask the Investigating Officer and learned Deputy Prosecutor General present in Court what would be the fate of this bail application in terms of the appearance of the victim girl before this Court, who made a categorical statement that she was neither kidnaped nor

abducted by anyone, however, she contracted a valid marriage with co-accused Irfan Ali. Such order had been communicated to the SSP concerned and is now acknowledged by the Investigating Officer and learned Deputy Prosecutor General present in Court states that the matter is still pending at the Principal Seat of this Court and after its disposal, he will submit his report to the concerned Magistrate for disposal of the case in terms of the statement of the victim girl who appeared before this court and recorded her statement. Let him do so under the law subject to recording her statement for investigation purposes so that the matter could be placed before the competent court for appropriate orders. I hope the investigating officer will comply with the court order in its letter and spirit. SSP will supervise his investigation and he will ensure the production of the victim girl and produce her before this court in the above proceedings for appropriate orders.

9. *Prima facie*, the case against the applicant needs to be looked into in terms of the statement of the victim girl who appeared before this Court for the reason that this court which deals with an application for 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.

10. Before parting with this order, 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 subsection. 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.

11. In principle, 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 the offense alleged.

13. In the present case, the learned trial Court has failed to adhere to the principle of law enunciated by the Supreme Court, as discussed supra, for the exercise of discretion to grant.

14. 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; and Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488.

15. Keeping in view the facts and circumstances narrated above and the law on the subject, I am of the considered view that the case of the applicant is of further inquiry fully covered by section 497(2) Cr. P.C. is entitled to the concession of post-arrest bail.

16. In view of the above, applicant Chakar is admitted to post-arrest bail in FIR No.66/2024 under Sections 365-B, 382, 337-H(2), PPC of Police Station Tando Masti Khan subject to his furnishing a solvent surety in the sum of Rs.50,000/- (Fifty thousand rupees) to the satisfaction of trial Court.

17. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial.

JUDGE

Abdul Basit