

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-873 of 2024
Criminal Miscellaneous Application No.S-562 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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03.09.2024

Mr. Ali Murtaza Babar, Advocate for applicant in Criminal Bail Application No.S-873 of 2024.

Mr. Ghulam Ali Mughal, Advocate for applicant in Criminal Miscellaneous Application No.S-562 of 2024.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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O R D E R

ZULFIQAR ALI SANGI, J:- Since the captioned matters are relating to one and same crime, hence the same are being decided together with this single order.

2. Applicant Zoheb Noor @ Zoheb seeks his pre-arrest bail in Crime No.207 of 2024 registered under sections 365-B and 496-A P.P.C, after dismissal of his bail plea by the learned Additional Sessions Judge-IV, Dadu vide order dated 03.08.2024 while applicant / complainant Abdul Jabbar seeks cancellation of bail granted to respondent Ashfaque by the learned Trial Court through aforesaid same order in aforementioned crime.

3. As per FIR the allegation against the accused is that they kidnapped victim Mst. Shumaila on the force of weapons when she visited Dadu along-with complainant & PWs for the purpose of getting grant of Benazir Income Support Program.

4. It is contended by learned counsel-Ali Murtaza Babar that there is delay of 21 days in registration of FIR; that the alleged abductee had earlier filed Constitutional Petition bearing No.S-249 of 2024 and she sworn her affidavit before this Court wherein she specifically stated that no one had kidnapped her but she with her own consent as well as freewill has contracted marriage with one Muhammad Urs however subsequently she was produced before the learned Magistrate where her statement under section 164 Cr.P.C was recorded in which she has nominated the present applicant-Zoheb Noor @ Zoheb, therefore, in view of her statement made before this Court, the case of aforesaid applicant requires further inquiry and he is entitled for confirmation of bail.

5. The bail plea has been opposed by learned counsel for applicant / complainant-Ghulam Ali Mughal as well as the learned APG on the ground that applicant Zoheb Noor @ Zoheb is nominated in FIR with specific role and the allegation leveled against him has been supported by alleged abductee while recording her statement under section 164 Cr.P.C, therefore, he is not entitled for confirmation of bail.

6. Heard learned counsel for the respective parties and record perused.

7. It appears from the record that in the FIR the date of incident is shown as 04.06.2024 whereas alleged abductee filed Constitutional Petition on 25.06.2024 much after the alleged abduction wherein she before this Court has denied the allegation by stating that no one has kidnapped her. Further there is no record with the prosecution which shows that how she was

recovered but it is stated that she herself had come to home and then was produced before the learned Magistrate for recording her statement. Additionally, there is considerable delay after her reaching home and recording 164 Cr.P.C statement which open rooms for consideration. Under these circumstances a good case for confirmation of pre-arrest bail is made out, as such, instant bail application is allowed result thereof interim pre-arrest bail earlier granted to applicant Zoheb Noor @ Zoheb vide order dated 06.08.2024 is hereby confirmed on same terms and conditions.

8. Reverting to the miscellaneous application wherein applicant / complainant Abdul Jababr has sought for cancellation of bail granted to respondent Ashfaque who was even not nominated in FIR nor any role has been attributed to him as such bail was rightly granted to him by the learned Trial Court. Grant of bail and its cancellation stand on different footing and there is often no compulsion for cancelling a bail unless the order is found patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice or where the accused is found to be misusing the concession of bail by tampering with the prosecution case or intimidating witnesses.

9. For the foregoing reason, I am of the opinion that bail has been rightly granted by the trial Court to respondent-Ashfaque which is also a court of competent jurisdiction for the same and nothing has been brought on record to show that the aforesaid respondent Ashfaque was not entitled for bail or has misused the same in any manner. As such, finding no substance in the instant criminal miscellaneous application, the same being devoid of merits is dismissed in *limine*.

Muhammad Danish*

JUDGE