

**IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT
SUKKUR**

Cr. Bail Application No.S-374 of 2023

Applicant: Fateh Ali PhariroS/oNiaz Ali,
Through Syed Jaffar Ali Shah,
Advocate.

Complainant: Mst. ShabnamKhatoon through Mr.
Abdul RaheemMahar

The State: Through Mr. Khalil Ahmed Maitlo,
D.P.G.

Date of Hearing: 15.09.2023

Date of Order: 15.09.2023

ORDER

ARBAB ALI HAKRO, J.- Through this bail application under Section 497 Cr.P.C., the applicant/accused Fateh Ali Phariro seeks admission to post-arrest bail in Crime No.160/2022, registered against him on 11.12.2022 at Police Station Ranipur District Khairpur, under Sections 365-B, 363, 344, 148, 149 PPC. The applicant had previously applied for post-arrest bail by filing Cr. Bail Application in Sessions Case No.228 of 2023, before learned Additional Sessions Judge-IV/G.B.V. Court, Khairpur, but the same was dismissed vide order dated 31.05.2023; hence, the applicant approached this Court.

2. The case of the prosecution, as set up in the subject F.I.R., is that on 06.12.2022 in the morning, Complainant, along with her husband Nadeem, cousin Ramz Ali, Mst. Sorath, her brother's wife and niece, baby Shaista and Agha Bilal left the village towards Ranipur Dargah for Ziarat, and after a visit, they returned towards the village. It was about 03:00 p.m., when the Complainant, along with relatives, reached near Abul Wah Watni Bridge, where one white coloured carry van parked from which five accused alighted, who are identified as Sikandar Ali, Ghulam Nabi, Tasleem, Fateh and Abia all r/o Ali Muhammad Phariro, Taluka

Mehrabpur, District Naushahro Feroze, all of them took out pistols from their folds and threatened them to remain silent, after that, accused Sikandar Ali forcibly took Mst. Sorath (alleged abductee) got them to sit in a carry van along with baby Shaista and Master Agha Bilawal, hence committed the heinous offence of abduction.

3. At the very outset, it has been contended by the learned Counsel for the applicant that the applicant has been falsely roped in this case due to a matrimonial dispute. It is argued that there is a delay of five days in the lodgment of F.I.R., besides the alleged abductee, in her statement recorded under Section 161 Cr. P.C. did not disclose the name of the present applicant, which shows that the present applicant neither participated nor committed the alleged offence. It is further argued that the Complainant, in her F.I.R., alleged that abduction had been made for a commission of Zina; however, the alleged abductee, in her statement, denied forced marriage or committed Zina with her. He argued that the alleged abductee had not recovered from the applicant's custody; rather, she had voluntarily appeared before the Police. He lastly argued that the case against the accused requires further inquiry into the guilt, and his case does not fall within the ambit of Section 497(2) Cr. P.C., thus, he is entitled for bail. In support, he relied upon the case law reported in **2022 MLD 1078**.

4. The learned Counsel for the Complainant submits that parties have compromised and he has no objection to the grant of bail.

5. On the other hand, the learned Deputy Prosecutor General opposed the bail application and contended that as per the contents of F.I.R., abduction had been made by the applicant on the force of weapons, which is against the norms of society; hence, applicant does not entitle for the relief claimed. He referred to the cases reported in **2021 YLR 402** to support his contentions.

6. I have heard Counsel for the applicant, complainant and D.P.G., so I also carefully examined the material on record.

7. From the perusal of record, it appears that the alleged incident is shown to have taken place near Abul Wah Watni Bridge at 03:00 p.m, which is hardly at a distance of two kilometres from the Police Station; however, the F.I.R. was lodged after delay of 05(five) days and no plausible explanation has been given by the Complainant with respect to this delay, which indicates that F.I.R. has been lodged with due deliberation and consultation. I fortify my view from the dictum laid down in the case titled "*Khair Muhammad and another vs The State through P.G. Punjab and another* **(2021 SCMR 130)** wherein it has been held as under:-

"....According to the contents of the crime report, it is mentioned that the occurrence has taken place in the morning whereas the matter was reported to Police at 10:50 a.m. Admittedly, the inter-se distance between the place of occurrence and police station is 08-KM. Inordinate delay qua time of occurrence and registration clearly reveals that possibility of deliberation and consultation cannot be ruled out..."

8. The Apex Court has reiterated a similar view in the case titled "*Nadeem alias Nanha alias Billa Sher Vs. The State*" **(2010 SCMR 949)**.

9. It is also surprising to note that neither the brother nor father of the alleged abductee lodged the F.I.R., but it was lodged by her sister-in-law, which makes the case highly doubtful. It also does not apply to a prudent mind that, as per the contents of F.I.R., the alleged abductee was abducted for the purpose of committing Zina. However, despite remaining in confinement for 35 days, the alleged abductee has not levelled such an allegation in her statement recorded under Section 161 Cr.P.C. However, she has levelled such allegation of committing zina in her 164 Cr. P.C. statement, which is an improvement and makes the case of two versions, hence requiring deeper appreciation, which is not permissible at the

bail stage. Besides, there is no medical certificate of the victim to support her version of committing zina with her. Anyhow, the trial court will make a final determination after recording and evaluating the evidence. The record also reveals that the alleged abductee was not recovered from the possession of applicant, but she has voluntarily appeared before the Police. The applicant is in jail and is no longer required for investigation. The applicant, who remained in police custody, has not made a confession before the competent Court, nor have the Police recovered the abductee from his possession, which makes the applicant's case one of further enquiry as contemplated under Section 497(2) Cr.P.C.

10. In view of the above, I am of the view that the applicant has successfully made out a case for a grant of post-arrest bail. Accordingly, the bail application is allowed, and the applicant is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- with PR Bond in the like amount to the satisfaction of the trial Court.

11. Needless to add, the observations made hereinabove are tentative only to decide this bail application, which shall not in any manner influence the trial court at the time of the final decision of the subject case. However, the learned trial court is directed to proceed with and conclude the trial expeditiously.

JUDGE