

sh

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Crl. Bail Appln. No.S-420 of 2018

Date of Hearing 14.9.2018.	ORDER WITH SIGNATURE OF JUDGE
----------------------------------	-------------------------------

1. For orders on office objections.
2. For hearing of Bail Application.

Mr. Safdar Ali G. Bhutto, advocate for the applicant.

Mr. Khadim Hussain Khooharo, Addl. P.G.

Through instant application, applicant Ali Hyder son of Ghulam Hyder Magsi seeks post-arrest bail in Crime No. ²⁶2018, registered at Police Station Abad, District Jacobabad, under Section 365-B, PPC. His earlier application for grant of bail being Crl. Bail Application No. 501/2018 was heard and dismissed by the learned Sessions Judge, Jacobabad vide order dated 13.6.2018.

2. Briefly stated, the facts of the prosecution case as narrated in the aforementioned FIR lodged on 02.5.2018 by HC Nawab Ali Arbani on behalf of State are that on the said date during the course of patrolling when he along with staff reached near Al-Sami Hotel, he received spy information that one Mst. Fapul daughter of Nabi Bux Jat, aged about 15/16 years, was kidnapped by three persons on 30.4.2018, hence he went to the house of said abductee and met with her brother Sanaullah and mother Mst. Razia, who disclosed that the present applicant/accused Ali Hyder and two unknown persons with intention to commit zina and marriage kidnapped Mst. Fapul on 30.4.2018, at about 2.00 a.m. It is further alleged that the complainant was asked to register the FIR, but she refused to do so being poor persons and told them that she would get Mst. Fapul recovered through private 'Faisla'.

3. Learned Counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that even the investigating officer has not recorded the statement of Sanaullah, the brother


41

of alleged abductee and though the statement of her mother Mst. Razia has been recorded but she has not been cited as a witness in the challan submitted by the police after concluding the investigation, hence the entire evidence available with the prosecution is apparently hearsay, which cannot be relied under the law to connect the applicant/accused with the commission of alleged offence; that even the mother of alleged abductee filed her affidavit before the trial Court at the time of hearing of bail application, wherein she has exonerated the present applicant/accused from the commission of alleged offence; that the applicant/accused is confined in judicial custody since 09.5.2018 and police has submitted the challan, hence he is no more required for further investigation; however, the case of the applicant for the purpose of granting bail squarely falls within the ambit of further enquiry.

4. On the other hand, learned Addl. Prosecutor General opposes the grant of bail to the applicant on the ground that the applicant is nominated in the FIR by name and the alleged abductee has yet not been recovered.

5. Heard the learned Counsel for the applicant as well as learned Addl. P.G for the State and perused the material available on record.

6. It appears that though the alleged incident is stated to have taken place on 30.4.2018 but no such FIR was lodged either by the mother of the alleged abductee or her brother and the same has been recorded by the complainant being police officer on behalf of State on the basis of information allegedly received by him during course of patrolling in the beat. It further appears that none of the family members of the alleged abductee including her mother Mst. Razia and brother Sanaullah, who allegedly furnished the details of alleged incident to the complainant, have been cited as witnesses in the challan; even no statement in terms of Section 161, Cr.P.C of brother of the alleged abductee, namely, Sanaullah has been recorded by the investigating officer and the witnesses cited in the challan are all members of the police party, who were on patrolling along with the complainant on the day when the



49

complainant received information regarding commission of alleged offence. Prima facie, the evidence so far collected by the prosecution in the instant case is not more than the hearsay evidence. Even if the affidavit sworn by the mother of the alleged abductee before the trial Court at the time of hearing of bail application is ignored, the case of the applicant falls within the ambit of further enquiry as envisaged under sub-section (2) of Section 497, Cr.P.C. Hence, the applicant/accused is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lac only) and P.R bond in the like amount to the satisfaction of trial Court.

Bail application stands disposed of.


JUDGE

Qazi Tahir PA/*