

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammed Karim Khan Agha

Cr. Bail Application No.244 of 2016

MS Uzma Kalsoom  
Vs.

The State

Date of hearing:	23.05.2016
Date of Order	02-06-2016
Applicant:	Through Mr. Muzzamil Mumtaz, Advocate for applicant.
Respondent:	Through Mr. Saleem Akhtar, APG along with PDSP Mazhar Alvi, AIGP, Legal, DSP Rao M. Aslam and Inspector Habib Ali, AVCC.

**ORDER**

**Mohammed Karim Khan Agha, J.** Through this bail application under section 497 Cr.P.C. the petitioner seeks post arrest bail in FIR No. 520/2015, under section 392/365-A PPC r/w Section 7 of Anti-Terrorism Act, 1997, registered at PS Shahrah-e-Faisal, Karachi.

2. According to the contents of the FIR in the evening of 10.8.2015 the complainant along with his family came to Gulistan-e-Johar in Honda City car No.AGE-220 and at 2030 they stopped their car at Tariq Book Depot when two unknown culprits aged about 35/40 years by their description found to be one Sindhi and Urdu speaking and they duly armed with pistols forcibly entered the complaints car. Out of them one accused started driving the car for about half an hour and they snatched Samsung mobile phone, one pair of gold earrings and Rs.25,000/- cash from them. The accused dropped the complainant's wife and his three children at Rabia City and took him to ATM of Bank Al-Habib and forced him to withdraw cash of Rs.50,000/- through his ATM card for them. Whereafter they drove to the Tariq Book Depot area where they forcibly took the complainant from his car and pushed him into a white colour Mehran car, tied his hands and feet and took him to a flat in an unknown place where on shifting from the car to the flat he put up resistance whereupon a 17/18 year old girl gave him two injections which made him fall unconscious.

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3. On regaining consciousness the complainant found himself in a flat on 2<sup>nd</sup> floor. In the morning one accused told him that they had told his family members not to close his bank account else the complainant would be killed. Meanwhile the applicant kept on administering toxic injections to him. In the evening the accused told him that they had withdrawn Rs.50,000 from his ATM. However on the night of 11/12 August at about 0300 hours when the accused were sleeping the complainant made his escape and reached at police post of Sachal Police Station, who brought him to Sachal Police Station. There officers from CPLC and Shah Faisal Police Station came and raided the flat but the accused were not there. However, police recovered one pistol and other articles while in the meantime accused withdrew Rs.50,000 more from the complainants ATM. Thereafter, the complainant went home and came at police station on 12.8.2015 and lodged report against three identifiable accused persons, including one girl for his illegal confinement and snatching golden ornaments, etc.

4. Learned counsel for the applicant has contended that applicant is quite innocent and her name does not find place in the FIR and or 161 Cr.P.C. statement of the abductee. He further submitted that the lodging of the FIR is delayed by two days for which no plausible explanation has been offered by the complainant. He further contended that the applicant was falsely implicated in the instant case as her parents could not grease the palms of the police officials. He further submitted that neither the complainant disclosed in the FIR that he was kidnapped nor he stated that the accused persons demanded ransom from him. He next argued that the identification parade was belatedly held after 15 days of the alleged incident. Furthermore, he also submitted that on 13.8.2015 the mother and step brother of applicant had made applications to the Honourable Chief Justice of this Court and SHO PS Zaman Town regarding the illegal arrest of the applicant prior to the incident whilst the applicants arrest was shown by the police on 16.8.2015 as such she had been held in illegal confinement and was falsely implicated in this case on her failure to pay a bribe to the police. In the circumstances learned counsel submitted that the case of the applicant requires further inquiry and as such she should be enlarged on bail.

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5. Per contra, Mr. Saleem Akhtar, learned APG vehemently opposed the bail application on the ground that applicant being one of the co-accused in furtherance of their common intention and or object has participated in commission of heinous offence of kidnapping for ransom through her detaining and keeping the complainant drowsy whilst his bank accounts were looted by other co-accused. He further argued that applicant was identified by the complainant in identification parade held before a Magistrate. He next argued that in the FIR the complainant stated that one lady came to him and injected him therefore she has been assigned a specific role in the commission of offence and sufficient material is available on record against her. He further submitted that the case of the applicant does not fall under section 497(2) Cr.P.C. In the last he prayed that the bail application is liable to be dismissed.

6. We have considered the submissions of the learned counsel for the applicant, APG and scanned the record.

7. It is observed that the applicant had previously applied for bail before the Anti Terrorism Court No1 Karachi Division which was rejected by the learned judge by order dated 12-01-2016.

8. It is true that the accused was not nominated in the FIR however in cases of kidnapping for ransom this is not unusual as very often the abductee has no means of knowing who his kidnappers are. As such we do not consider this to be a particularly relevant ground for the grant of bail. It is however to be observed that a young woman was identified in the FIR and given a specific role of injecting the complainant with some kind of tranquilizers in order to keep the complainant subdued in the flat whilst the other accused made further illegal withdrawal of funds from the complainants Bank Account.

9. However it has come on record that during the investigation of the case the police arrested the applicant and Naveed Waqar the husband of the applicant. Furthermore the applicant was picked out at an identification parade by the complainant/abductee carried out before a Magistrate. As far as the belated identification parade is concerned in this case we are of the view that the same may be overlooked due to the gravity of the offense in which offenses people usually do not come forward due to their safety and security concerns unless the police ensure them that they will be protected

and as such in these cases of such gravity belated identification parades can be condoned. As to the safeness of the identification despite its delay it is taken into account that the complainant was in the care/detention of the applicant for more than one day in her flat and would have had ample opportunity to clearly see at close quarters the applicant and remember how she looked especially as no part of her face was muffled and she was up close to him whilst administering the injections.

10. Yet there is another aspect of the case. The mother of applicant filed CP No.D-1576 of 2016 against alleged illegal detention of the applicant. On 10.5.2016 this Court while disposing of the petition passed following orders:-

“At the outset, learned counsel for the petitioner states that the petitioner will be satisfied provided her application dated 8.2.2016 sent to IGP Sindh be disposed of in accordance with law. Ch. Muhammad Rafiq Rajori, Additional Advocate General present in court undertakes that the application of the petitioner will be dealt with subject to law within two weeks.”

11. Apart from above, this Court on 17.3.2016 in instant bail application also directed the AIGP/Legal to submit inquiry report conducted on the application submitted by the mother of the applicant. Whilst hearing this application the AIGP, Legal/PDSP Mazhar Alvi has submitted the inquiry report which indicates that the applicant had not been illegally confined by the police. Along with inquiry report are annexed photocopies of memo of identification parades of applicant, co-accused Naveed Waqar and Ghulam Ali held before XVIII Judicial Magistrate, Karachi East.

12. Furthermore, during investigation accused Naveed Waqar revealed that he through cell number 0302-8266184 of complainant/abductee contacted complainant's wife on cell number 0333-1263460 and demanded ransom of Rs.25,00,000.00 and told her not to close the account or else the complainant would be killed.

13. We would observe that the applicant has been charged with a heinous crime which regrettably seems to be becoming more prevalent in the city and is spreading fear and anxiety among the public at large who need to be protected from such crimes.

14. In this case it would seem that all the accused (including the applicant) have been arrested by the police and have been successfully identified by the complainant/abductee through a lawful identification parade. The applicant has been assigned a specific role in the offense of injecting the complainant by injecting him with some form of tranquilizers which kept him subdued whilst he was illegally confined and the other co-accused were busy looting his bank account through an ATM.

15. It therefore appears that the applicant was a part of the gang who kidnapped the abductee for ransom and played her part in it. It has also come on record that the co-accused threatened the family of the complainant that if they closed his bank account they would kill the complainant and also demanded heavy ransom for his release. Obviously the co-accused wanted the complainants bank account to remain open so that they could continue to loot it. A pistol was also recovered by the police along with the gold earrings which were snatched during the kidnapping when they raided the flat where the complainant/abductee had been held

16. This case is also of a heinous nature as mentioned above and falls within the prohibitory clause of S.497 Cr.PC. In our view sufficient material has been placed before us to connect the applicant to the commission of the offense hence the applicant's application for post arrest bail is dismissed.

17. The trial Court however is directed to examine the abductee within one month after receipt of this order and complete the trial within 3 months of the date of this order and submit fortnightly progress reports through MIT II to this Court. In case the trial is not completed within 3 months of the date of this order the applicant shall be at liberty, if so advised, to again approach this Court for bail on any fresh ground. A copy of this order shall immediately be forwarded to the concerned trial Court for compliance.

18. The applicant is also allegedly pregnant and according to her counsel no treatment is being provided to her in jail. Accordingly, if the applicant is indeed pregnant, the jail authorities are directed to provide all necessary treatment to the applicant whilst in jail during her pregnancy.

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19. It is made clear that we have only made a tentative assessment of the material which has been placed before us and this order shall not prejudice either party at trial which will be decided by the trial court on merits based on the evidence before it.

Dated :02-06-2016