

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Appln. No. S-240 of 2016

Date	Order with signature of Judge
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1. For order on office objection.
2. For order on M.A No.4365/2016.
3. For hearing of bail application.

25-08-2017

Mr. Mazhar Ali Bhutto, advocate for the applicants a/w applicants.

Mr. Ahsan Ahmed Qureshi, advocate for the complainant.

Mr. Aijaz Mustafa Samtio, DDPP for the State.

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Reasons to be recorded later-on, interim pre-arrest bail already granted to the applicants by this court vide order dated 16.05.2016 is hereby confirmed on the same terms and conditions.



Judge

Abdul Salam P.A

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Mr. Mazhar Ali Bhutto, Advocate for applicants.
Mr. Ahsan Ahmad Quraishi, Advocate for complainant.
Mr. Aijaz Mustafa Samtio, DDPP.

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Omar Sial, J: Applicants Barkat Ali and Pervaiz alias Ghulam Mustafa have sought pre-arrest bail in Crime No.18 of 2013 registered under Sections 365-B, 344 and 376 PPC at the Badeh Police Station. Earlier, their pre-arrest bail application was dismissed by the learned Sessions Judge, Larkana, vide Order dated 10.5.2015.

2. Brief facts of the prosecution case are that on 07.03.2013, one Gul Hassan Chandio lodged a report at the Badeh police station stating therein that on 13.01.2013 his daughter Sumera aged 12 or 13 after quarrelling at home went to the house of one Kirir at about 9:00 p.m. When she did not return, the complainant party started to search for her. They were informed that Kirir, Nangar, Amjad and Sultan, all Chandio by caste have abducted her in a car and have handed her over to one, the Applicant Pervaiz with the intent that Pervaiz should commit Zina with her. After 10 days the complainant along with some other persons went to Karachi and met the father of Pervaiz i.e. Applicant Barkat where another unknown person was also present. They were told that Kirir, Nangar, Amjad and Sultan had handed over Sumera to them. After 23 days Applicant Barkat informed them that they should come to Kotri, where Sumera was handed over to the complainant party. Sumera informed everybody when she came home, that she was abducted by Kirir, Nangar, Amjad and Sultan and then handed over to Applicant Pervaiz who committed Zina with her for 23 days. She was then returned by Applicant Barkat. Kirir kept the complainant on false hopes of a "Faisla" but then he refused to hold one, and as a consequence he was

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lodging the current report. Based on his report the aforementioned FIR was registered against Kirir, Nangar, Amjad, Sultan, Pervaiz and Barkat.

3. I have heard the learned counsel for the Applicants and the complainant. I have also heard the learned DDPP and examined the record with the assistance of the counsel. My observations are as follows.

4. The story as narrated in the FIR prima facie requires further enquiry. It transpired during the hearing that not only are the abductee and the Applicants closely related but that accused Kirir is a neighbor of the complainant. Also, that Sumera is a friend of Kirir's daughter. Sumera, according to the counsel for the Applicants as well as the complainant's counsel is Applicant Barkat's wife's sister and the maternal aunt of Applicant Pervaiz. It has been argued by the Applicant's counsel that the involvement of the Applicants in this FIR is with complete malafide and ulterior motive and solely on account of a matrimonial dispute in the family. Such argument is not negated by the counsel for the complainant.

5. Accused Kirir and Nangar, have been acquitted after a full dress trial by the learned 4<sup>th</sup> Additional Sessions Judge, Larkana, vide his order dated 30.10.2014. Such acquittal was not challenged by the complainant or the State.

6. The complainant even by his own account knew that Sumera was with his relatives, the Applicants, still it took him 10 days to go visit them in Karachi. Subsequently, he waited another 23 days for Sumera to be brought back by Applicant Barkat. During this period, he made no effort to recover Sumera from his relatives nor did he inform the police that she had been abducted/ kidnapped and was being detained. Then after Sumera had returned he waited another 2 weeks before he decided to go lodge the FIR. Such conduct of the complainant prima facie appears unnatural conduct of a father whose daughter is missing. 



7. The first time Sumera was taken to the doctor for a medical checkup was 3 days after the filing of the FIR. Obviously, the medical report did not reveal much to implicate the Applicants. It was another 17 days later that she recorded a statement under Section 164 Cr.P.C implicating the accused in the crime. The 164 Cr.P.C. statement of the abductee prima facie does not reconcile with the facts of the crime as stated by the complainant. However, I have intentionally restrained myself from making further observations on this account so as to not prejudice the case of either party.

8. The incident took place on 13.01.2013 and the FIR was lodged on 07.3.2013. The Applicants voluntarily surrendered themselves before the trial Court sometime in May 2015. I have considered this aspect of abscondence at this pre-arrest bail stage as it is a factor that makes an accused lose some of their rights. The learned counsel for the Applicants has argued that the Applicants live in Karachi and were unaware that they were nominated in an FIR in Larkana. He further argues that had the Applicants been sitting watching the proceedings they would not have waited for 18 months after the acquittal of Kirir and Nangar to surrender themselves. Keeping all the circumstances of the case in mind I am of the view that pre-arrest bail should not be denied to the Applicants on this account alone.

9. In view of the above reasons, at this stage malafide on part of the complainant cannot be completely ruled out and the case of the Applicants requires further probe. As such, vide short order dated 25.08.2017 the interim pre arrest bail already granted to applicants on 16.5.2016 was confirmed on same terms and conditions and these are the reasons for the same.

*Muhammad*  
8/9/17  
JUDGE

Ansari/\*