

ORDER SHEET**THE HIGH COURT OF SINDH, CIRCUIT COURT .
LARKANA**

Cr. Bail Appln. No. S-214 of 2022

Cr. Bail Appln. No. S-215 of 2022

Cr. Bail Appln. No. S-280 of 2022

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| Applicants (in Cr. Bail Appln. No. S-214/2022) | Rafique Ahmed & others, Through Mr. Zafar Ali Malgani, advocate a/w applicants. |
| Applicants (in Cr. Bail Appln. No. S-215/2022) | Riaz Ahmed and another, Through Mr. Aftab Ahmed Channa, advocate a/w applicants |
| Applicant (in Cr. Bail Appln. No. S-280/2022) | Younis Ali @ Akbar Bijarani, Through Mr. Zafar Ali Malgani, advocate |
| Complainant | Khairjaan Lashari, Through Mr. Amanullah Luhur, advocate |
| The State | Mr. Ali Anwar Kandhro, Additional Prosecutor General, |

Date of hearing& order: 25-07-2022

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ORDER

Adnan-ul-Karim Memon, J. Through Bail Application Nos. S-214/2022 and S-215/2022, the applicants seek confirmation of interim pre-arrest bail already granted to them vide orders dated 21.04.2022 and through Bail Application No. S-280/2022, the applicant seeks post-arrest bail in crime No.67 of 2022, for offenses under sections 365 and 343 PPC. All these bail applications arise out of one and same F.I.R, hence all these bail applications are taken up together for a just decision on merits.

2. The accusation against the applicants is they kidnapped complainant Khair Jan Lashari to recover Rs: 6, 29,000/- from him being missing amount from Device of Benazir Income Support Programme and wrongfully confined him for more than three days in their illegal custody; after release from their custody,

such report of the incident was lodged with the concerned police station on 4.4.2022, after a delay of 3 days, whereas the alleged offense took place on 1.4.2022.

3. It is inter alia contended by Mr. Zafar Ali Malganillearned counsel for the applicants that they are innocent and have been falsely implicated in the aforesaid crime by the complainant with ulterior motives and mala fide intentions; that the FIR of the alleged incident has been lodged with the delay of about three days, therefore, the applicants are entitled to grant of bail on point of further inquiry. It is next argued that the name of accused Altaf Ahmed was kept in Column No:II of the challan sheet by the investigation officer, as such, this case has become of two versions. He next argued that the alleged incident is unwitnessed; and even nothing has been said about the alleged confinement of the complainant as he voluntarily disappeared and after three days resurrected as no offense at all, has been made out. He after that contended that mala fide of the complainant in connivance with the police is apparent on the face of the record as such the applicants in pre-arrest bail application are entitled to the confirmation of their bail, whereas the applicant in post-arrest bail is also entitled to concession of post-arrest bail in terms of section 497(2) Cr.P.C. He lastly prayed for allowing the instant bail applications.

4. Mr. Ali Anwar Kandhro, Additional Prosecutor General, assisted by Mr. Amanullah Luhurlearned counsel for complainant have opposed for grant of pre/post-arrest bail to the applicants by contending that they have actively participated in commission of the alleged incident and no such ulterior motives on part of complainant has been pointed out; that the name of the applicants are appearing in FIR with specific allegation that they by show of kidnapped complainant in order to compel him to comply with their demand to pay missing amount of Rs:6,29,000/- of device of Benazir Income Support Programme to them therefore, they have illegally and unlawfully kidnapped the complainant and confined him at unknown place for more than three days; that the prosecution witnesses in their statements recorded under section 161 Cr.PC have fully supported the case of prosecution thereby implicated applicants from commission of offence; that mere offences do not fall within the prohibitory clause of S.497(1) Cr.P.C, does not mean that it has become a bailable offence. In support of their contention, they relied upon the case of Afzaal Ahmed Versus The State, reported in 2003 SCMR 573.

5. I have heard the learned counsel for the parties, perused the record, and also examined the case law on the subject.

6. After going through the narration of the FIR and the evidentiary material collected by the police, it divulges that there is a delay of three days in the registration of FIR and no reason has been assigned by the complainant concerning this delay, which prima-facie indicates that FIR has been lodged with due deliberation and consultation. In case of kidnapping and abduction of any person to be secretly and wrongfully confined then section 365 PPC will be applicable. Similarly, if a person is simply wrongfully confined, the provisions of section 343 PPC could be applied.

7. After going through the FIR, prima-facie, it is yet to be determined by the learned trial court whether the complainant was secretly and wrongfully confined by the applicants or he simply disappeared and re-appeared voluntarily as nobody has recorded such statement to the above effect; and it is for the trial court to screen out such state of affairs if at all it happened, in such scenario, prima-facie, it is yet to be seen whether section 343 PPC would attract or section 365 PPC. Anyhow, the final determination will be made by the learned trial court after recording and evaluating the evidence. Besides the two conflicting versions; one given by the complainant in the FIR and the other by the Investigating Agency as per the charge sheet, the case of the present applicant for post-arrest bail has become certainly one of further inquiry, falling within the ambit of sub-section (2) of Section 497, Cr.P.C., where the grant of bail becomes the right of accused and it is not a grace or concession, to be given by the Court. In the absence of any exceptional ground or reason, denial of post-arrest bail in such a case would amount to exercising discretion in a manner, not warranted by law and principle of justice.

8. Although, Bail Application Nos. S-214/2022 and S-215/2022, as discussed supra, pertain to pre-arrest bail of the applicants, and merits for grant of bail before arrest and after arrest are altogether different, however, the Honorable Supreme Court in the case of Meeran Bux v. The State and another (PLD 1989 SC 347) has held that while granting pre-arrest bail even the merits of the case can be touched upon. A similar view has been reiterated by the Honorable Supreme Court in the case of Sajid Hussain alias Joji Vs. The State (PLD 2021 SC 898). It is well settled by now that it is not possible in every case to prove malafide but the same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post-arrest bail then mere at the wish of the complainant, he cannot be sent behind the bar for a few days by dismissing his application for pre-arrest bail. On the aforesaid proposition, I fortify my view from the dictum laid down by the Honorable Supreme Court in the case of Khalil Ahmed Soomro vs. The State (PLD 2017 SC 730). In such

circumstances, the applicants have made out a case for pre-arrest bail in the aforesaid crime, for the reasons discussed in the preceding paragraphs.

9. In view of, what has been discussed above, these applications are accepted and the applicant, in the Bail Application No. S-280/2022, is admitted to post-arrest bail provided he furnishes bail bonds to the tune of Rs. 1, 00,000/- (one lac only) and PR Bond in the like amount to the satisfaction of the learned trial Court, whereas the interim bail granted to the applicants in Bail Application Nos. S-214/2022 and S-215/2022, are hereby confirmed in the same terms vide orders dated 21.4.2022.

10. The observation made hereinabove is tentative which shall not prejudice the case of either party at trial.

JUDGE

S.Ashfaq