

15

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appln. No.S-674 of 2023.

Date of hearing

Order with signature of Judge.

1. For orders on office objection.
2. For hearing of bail application.

Applicant : Through Mr. Wazeer Ahmed Ghoto, Advocate.
(Mazhar Ali Mirani)

The State : Through Mr. Ali Anwar Kandhro, Addl. P.G.

Complainant : Present in person.
(Khair Muhammad)

Date of hearing : 14.03.2024.

ORDER.

MUHAMMAD SALEEM JESSAR- J.- Applicant Mazhar Ali Mirani seeks post arrest bail in Crime No.166 of 2023, registered with PS New Foujdari, Shikarpur, for offence under Sections 365-B, 363, PPC & 3-TIP. Applicant filed post arrest bail application before the trial Court/ IIIrd Additional Sessions Judge, Shikarpur vis-à-vis Cr. Bail Appln. No.1081 of 2023, where, after hearing the parties, his request was turned down vide order dated 12.10.2023; hence, this application has been maintained.

2. According to the case of prosecution on 22.07.2023, at about 11.00 a.m., accused persons, namely, Mazhar Ali(the applicant), Mir Muhammad and Arbab Ali, being armed with TT Pistols, abducted Mst. Shabana wife of complainant Khair Muhammad and their minor daughter baby Kousar from outside of Civil Hospital, Shikarpur, with intention to commit zina with her; hence, such FIR was lodged by complainant on 08.8.2023.

3. Learned Counsel for the applicant submits that the applicant is innocent and has been falsely implicated in this case by the complainant. He next

12

submits that there is 17 days delay in lodgment of FIR without plausible explanation furnished by the prosecution and that general role of abduction is attributed to all the accused persons named in the FIR. He submits that no such incident has occurred and in fact the alleged abductee had contracted free-will marriage/nikah with the present applicant on 24.07.2023 and she had also sworn her affidavit before Justice of Peace at Karachi and subsequently she had also recorded statement before 12th Civil Judge/JM, South Karachi on 26.7.2023, wherein she clearly stated that she was not abducted by any one. He further submits that the alleged abductee was not recovered by the police, but she had returned to the house of her brother at her own on 17.8.2023 i.e. after about 25 days of the alleged incident. He next submits that the 164, Cr.P.C statement of alleged abductee was recorded on 18.9.2023 i.e. after the delay of more than a month after her return, wherein she has not specifically named any one including the applicant for abducting her; therefore, per learned Counsel, the case against the applicant requires further enquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. He, therefore, requests that the applicant may be extended concession of bail. In support of his contentions, he places reliance upon following case laws:

1. *Ehsan Ullah v. The State* (2012 SCMR 1137),
2. *Abdul Razaq v. The State and another* (2022 PCr.LJ 953),
3. *Muhammad Yousaf v. The State and another* (2020 PCr.LJ 245),
4. *Muhammad Shahbaz v. The State and another* (2018 PCr.LJ 1025),

4. Learned Addl. P.G., appearing for the State, opposes the bail application, on the ground(s) that the applicant has been nominated in the FIR with specific role of abducting the wife of complainant along with her minor daughter. The alleged abductee Mst. Shabana has implicated the applicant in the commission of alleged offence and this is an offence against the society, therefore, the applicant is not entitled for concession of bail.

5. Mr. Abdul Rehman A. Bhutto, learned counsel for the complainant, also opposes the bail application and submits that the applicant having abducted

young wife of complainant along with minor daughter is not entitled to be released on bail.

6. Heard learned Counsel for the respective parties and perused the material made available on record.

7. The alleged incident is shown to have occurred on 22.7.2023; however, the FIR was lodged with the delay of 17 days i.e. on 08.08.2023, for which no plausible explanation has been furnished by the prosecution. The delay in criminal cases has always been held fatal for the prosecution by the Superior Courts; particularly in the cases of like nature silence on the part of complainant for 17 days leaves adverse impact upon the prosecution case, rather it confirms that the FIR has been got recorded after due deliberations and consultations. No doubt the applicant has been nominated in the FIR, but it is also an admitted position on record, as is reflected from the documents submitted, that the alleged abductee Mst. Shabana being *sui juris* had entered into free-will marriage/nikah with the present applicant and she had sworn her affidavits of free-will before the Justice of Peace as well as before the Magistrate at Karachi, wherein she apart from denying her abduction, claimed to have been divorced by her husband i.e. complainant. It is also admitted fact on record that the alleged abductee was not recovered by the police, but she had returned at her own on 17.8.2023 and recorded 164, Cr.P.C statement before Magistrate on 18.9.2023 i.e. after more than a month after her return, wherein she changed her version. Now-a-days it has become a common trend in our society that a girl once elopes with her paramour and contracts free-will marriage/Nikah with him and later on when she joins back her relatives, she takes somersault and involves same person with the allegation of abduction etc. and that is more probably on account of her being insisted by her relatives. Anyways, the veracity and voluntariness of such 164, Cr.P.C statement of the alleged abductee is a question to be answered after

71
recording evidence of alleged abductee at trial and at this stage such belated 164, Cr.P.C statement of alleged abductee may not be considered unless tested in the trial. Even otherwise, at bail stage only tentative assessment is allowed. In the given circumstances, instant case, in my opinion, has become of two versions and which one is correct is yet to be determined by the trial Court after recording evidence. Hence, the case against the applicant calls for further enquiry, as envisaged under sub-section (2) to Section 497, Cr.P.C

8. For the foregoing reasons, the applicant in my view deserves to be enlarged on bail. Accordingly, instant bail application is allowed. The applicant shall be released on bail on his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and P.R. Bond in the like amount to the satisfaction of learned trial Court.

9. Needless to say that the observations recorded hereinabove are based on tentative assessment of the material placed on record, which shall not influence the trial Court in any manner while dealing with the trial

~~JOHN E~~