

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 335 of 2014.

Date of hearing	Order with signature of Judge
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25.05.2015.

1. For orders on M.A. No. 1775/2015.
2. For orders on office objections.
3. For hearing.

Mr. Ahsan Ahmad Quraishi, Advocate for applicant.

Mr. Munir Ahmed Abbasi, D.D.P.P.

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This criminal bail application was filed on behalf of two applicants, namely, Sobdar Ali Khoso and 2. Ameer Ali, seeking post arrest bail in Crime 53/2014 registered with P.S Mehar, District Dadu, for offence punishable under Section 364 P.P.C. However, on 12.12.2014, the bail application on behalf of applicant No.2 Ameer Ali was not pressed by the learned counsel, therefore, the same was dismissed as not pressed.

The facts of the prosecution case as per F.I.R are that on 03.03.2014, complainant Muhammad Juman Khoso lodged report with P.S Mehar, in the following wording:-

*“Respected Sir, it is submitted that above named applicant while bringing copy of the Order of Court of learned Additional Sessions Judge, Sahab, Mehar, vide No.298, dated 26.2.2014, came and recorded his statement. Such statement is reproduced hereunder:*

*I, Muhammad Juman son of Muhammad Umar by caste Khoso, resident of Deewan Khoso, Taluka Mehar, do hereby state that, daughter of Muhammad Mithal son of Rawat Khoso, originally resident of Darri, Taluka Mehar, presently residing in Gul Muhammad Khoso village near Larkana, namely, Mst. Ajeeban is married with my son Saddam Hussain and he has three daughters from her wedlock. Earlier in time, my son Saddam Khoso had caused injury to his wife Ajeeban, and she had filed such case against my son, however later on such “Fasila” was made and we had patched-up. That, on 01.12.2013, Sobdar son of Muhammad Mithal Khoso, 2. Mst. Ajeeban wife of Sadam Khoso, 3. Mureed alias Jogi son of Ali Khan Gadehi, 4. Ameer Ali son of Behram Khoso, resident of village Mohammad Khoso, near Larkana came to my house, who in the morning time taken with them my son Sadam Khoso; my son told me that, he is going to reside with his wife, at that time my sons Abdul Ghaffar and Rajib were also available with me. Thereafter, my son Sadam Khoso did not return, as such, I and my above named sons went to accused persons, who disclosed that my son Sadam Khoso is not with them. We, were kept on searching for him, and have came to know that, above named accused persons have abducted away my son Sadam Hussain Khoso with intention to commit his*

*murder and have misplaced him. Now, I have come by bringing copy of the Order No.298, dated 26.2.2014, and record my statement."*

I have heard learned counsel for the applicant, as well as learned D.D.P.P and gone through material available before me.

Learned counsel for the applicant mainly contended that, F.I.R is delayed for about three months and the explanation furnished by complainant for such inordinate delay is not plausible and satisfactory; that parties are already on inimical terms with each other, as according to learned counsel an F.I.R No.22/2013 was registered by present applicant Sobdar Ali with same police station against sons of present complainant for murderous assault and this fact has also been mentioned in the instant F.I.R; that since the complainant wanted to lodge false F.I.R, therefore, concerned police at first refused him to record his F.I.R, but the complainant succeeded in getting order from Justice of Peace by concealing actual facts and misrepresentation of facts. Learned counsel in the last contended that it is well settled principle of law that benefit of slightest doubt even at bail stage should be extended in favour of the accused. Learned counsel has further contended that ingredients of Section 364 P.P.C are not attract to the instant case for the reason that the alleged abductee left the house voluntarily by informing his father (complainant) that he (alleged abductee) is going to reside with his wife and in-laws. Learned counsel in support of his contentions placed his reliance on the case of *Mir Azam v. The State* (PLD 1994 Peshawar 155). It was observed in this case that evidence did not show any use of force against the deceased when he initially on the call of the accused accompanied him from his house. No case of kidnapping or abduction within the ambit of Section 364 P.P.C could therefore be made out against the accused and the accused was acquitted of the charge.

Conversely, learned D.D.P.P vehemently opposed grant of bail in favour of the accused on the ground that the applicant has been nominated in the F.I.R with specific role of taking away the abductee with him alongwith other co-accused and till date the alleged abductee has not been recovered and there is every likelihood that the abductee has been murdered; and that the offence with which the applicant is charged does fall within prohibitory clause of Section 497 Cr.P.C.

There is sufficient delay in lodging the F.I.R, for which no satisfactory explanation has been furnished by the complainant and this sole ground makes the case of prosecution one of further inquiry entitling the accused to grant of bail. Furthermore, contents of F.I.R itself reveal that the alleged abductee voluntarily accompanying accused persons from his house by informing his father (complainant) that he is going to live with his wife; no any use of force is shown against him by the accused persons. Thus, prima-facie ingredients for making out a case of kidnapping or abduction are lacking in the instant case.

In view of the above position, the applicant has succeeded to make out a case for grant of bail in his favour. Accordingly, the bail application stands allowed. The applicant is directed to be released on bail on his furnishing solvent surety in the sum of Rs.200,000/- (Two hundred thousand rupees) with P.R bond in the like amount to the satisfaction of trial Court.

Needless to mention that the observations made hereinabove are tentative in nature and would not pre-judice case of either party at trial.

Judge