

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-1232 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

19.06.2017.

Mr. Inam Ali Malik, Advocate for the applicants.

Mr. Shahid Ahmed Shaikh, A.P.G.

Mr. Ghulam Sajjad Gopang, Advocate for the complainant.

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Through instant bail application, applicants seek pre-arrest bail in Crime No.160 of 2011, registered at Police Station Kazi Ahmed, under section 365-B PPC.

2. Precisely, relevant facts of the prosecution case are that complainant lodged F.I.R. contending therein that applicants alongwith other co-accused persons intruded in their house; they were armed; accused Zakir and Shakeel caught hold Mst. Haseena, sister of the complainant, and dragged her out of the house. Subsequently, they took her away. Some of the accused were boarded on car and some of them were on motorcycle. Abductee Mst. Haseena returned back on same day; her 164 Cr.P.C. statement was recorded wherein she stated that accused caused her abduction with intention to compel her for forcible marriage; they tried to commit offence of zina but failed and she escaped and returned back.

3. At the outset, learned counsel for the applicants, *inter alia*, contends that applicants have been implicated in the present case with malafide intention and ulterior motive; co-accused Mulazim Hussain has been granted post-arrest bail by the trial Court by order dated 25.03.2017, against whom as per F.I.R. allegations are almost same, hence no purpose would be served if they are remanded to jail and then they move application for post-arrest bail.

4. Counsel for complainant contends that there is serious threat to the life of abductee Mst. Haseena as well witnesses of the case. Complainant and one witness filed constitutional petitions for protection before this Court; same

were disposed of with directions to the official respondents that they shall provide complete protection to the petitioners of that petitions. In support of his contention, learned counsel for applicants relied upon the cases of **Sher Muhammad v. State** (2009 PCr.LJ 1386), **Javed Iqbal v. State** (2013 MLD 1463), **Muhammad Sadiq v. State** ((2015 SCMR 1394) and **Muhammad Aslam v. State** (2016 SCMR 2094).

5. Learned APG contends that this is a case of attempt of zina; however, applicants failed to achieve their object.

6. It is a fact that co-accused Mulazim Hussain has been granted bail by the trial Court on the ground that he was not nominated in the F.I.R., but subsequently implicated by the complainant however it is not disputed that allegations, being general, were also same against co-accused Mulazim Hussain hence rule of *consistency* is fully applicable in the instant case. It is also a matter of record that applicants are attending trial Court regularly for more than a period of one and half year as interim pre-arrest bail was granted to them on 16.12.2015; one prosecution witness has been examined. It would suffice for *claimed* threats that in such petition a *proper* has been recorded thereby quarter concerned has been ordered to provide protection and *prima facie* no contempt or complaint in that regard is filed. Attempts of tampering with evidence may well be a ground to decline bail but since decline of bail is *otherwise* an act of depriving one of his liberty hence mere words or claims are not sufficient to *prima facie* for taking such a *serious* step. Further, it is by *now* a well settled principle of law that where an accused has *otherwise* made out a case for grant of bail even within scope of *further inquiry* the bail plea for pre-arrest be not *necessarily* declined in search of *malafide* because in such eventuality committing accused to custody would not advance cause of justice who *otherwise* has earned bail as a *matter* of right on bringing his case within scope of *further inquiry*. The co-accused has been granted bail by the trial Court and allegations against applicants are not *different* from such co-accused hence no purpose will be served if present applicants are remanded

to custody. Under these circumstances, the applicants / accused have succeeded in making out a case for confirmation of bail *plea*.

7. In view of the above, interim pre-arrest bail earlier granted to the applicants is hereby confirmed on same terms and conditions.

Bail application stands disposed of.

JUDGE

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