

Order sheet
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Cr. B.A. No. S- 576 of 2013

DATED	ORDER WITH SIGNATURE OF JUDGE
31.01.2018	

For hearing

Applicants are present on interim bail, their counsel is called absent
Mr. Shahid Ahmed Shaikh, D.P.G.

OMAR SIAL, J.- Applicants Muhammad Ilyas, Ashfaque and Imran have sought pre-arrest bail in Crime No. 27 of 2013 registered under Section 365, 452, 148 & 149 P.P.C. Earlier their pre-arrest bail applications were turned down by the learned 1st Additional Sessions Judge, Shaheed Benazirabad vide order dated 6-7-2013.

2. Brief facts of the prosecution case as stated by complainant Shamsuddin in the aforementioned FIR are that he has three sons and one daughter namely. Mst. Shomaila Bughio aged about 14/15 years who is studying in 9th Class. On 11.2.2013 at night he along with his son Ghulam Hussain Bughio and relative Molvi Ghulam Mustafa and other family members went to sleep. At about 2:00 a.m. there was a knock on the door of the house. When the complainant opened the door he saw (1) Muhammad Ilyas (Applicant (2) Ashfaque Khokhar (Applicant) (3) Imran Khokhar (Applicant - armed with pistol) (4) Nazeer and (5) Mst. Nasim standing outside, who then entered the house and on show of weapons forcibly kidnapped Shomaila and went away.

3. I have heard learned counsel for the Applicant as well as learned DPG and have examined the available record with their able assistance. None appeared on behalf of the complainant. My observations are as follows:

- i. It appears from the record that the Applicant Muhammad Ilyas is the husband of the alleged kidnappee. In this regard there is a copy of the nikahnama dated 12-2-2013 on record. It also appears from the record that the incident as reported by the father, occurred the same day i.e. 12-2-2013. On 16-2-2013 Shomaila recorded a statement before the Judicial Magistrate in Shahdara, Lahore, in which she claimed that she was married to Applicant Mohammad Ilyas and feared her parents. On 26-2-2013 she recorded her statement under Section 164 Cr.P.C before the Civil Judge & J.M.

III at Nawabshah in which she stated that she married Mohammad Ilyas under duress.

ii. No investigation has been conducted to determine whether the finger prints and signatures of Applicant Ilyas and Shomaila on the nikahnama are real or not. Nor has any investigation been done whether or not Shomaila filed the complaint before the learned Magistrate in Shahdara, Lahore. In fact very little meaningful investigation has been conducted at all. It is yet to be seen whether Shomaila left with Applicant Ilyas with her own free will or whether she was forced to do so. At this preliminary stage there is evidence to suggest that she did leave with Applicant Ilyas with her own free will. A conclusive finding in this regard can only be given after evidence is led in trial. Malafide and ulterior motive on the part of the complainant cannot be conclusively ruled out at this stage.

iii. The case of the Applicant requires further enquiry and thus falls within the ambit of Section 492(2) Cr.P.C.

4. Above are the reasons for my short order of 31-1-2018 in terms of which the interim pre-arrest bail already granted to the applicants on 17.07.2013 was confirmed on the same terms and conditions.

JUDGE