

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CR. B.A. NO. 385 OF 2016

Date	Order with signature of Judge
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PRESENT:
MR. JUSTICE ARSHAD HUSSIAN KHAH

FOR HEARING OF BAIL

07.11.2016.

None present for applicant
Mr. Zafar Ahmed Khan, Addl. P.G.

ARSHAD HUSSAIN KHAN, J: The order sheet of the case file reveals that for last four (4) dates counsel for the applicant/accused has failed to put his appearance in the case. The same situation exists today as well. Nevertheless, through this order I intend to dispose of above bail application.

2. The applicant/accused namely, Ghulam Muhammad son of Rafiq Ahmed, through the present bail application has sought post arrest bail in case F.I.R. No.518/2014 registered under Section 496-A/34 of Pakistan Penal Code, 1860, at Police Station Gulistan-e- Johar, Karachi.

2. Brief facts, as narrated in the F.I.R., are that Applicant/accused alongwith his co-accused Shabbir Ahmed son of Imam Bux, Asia wife of Manzoor Ahmed and Rafiq son of Ghulam Rasool, kidnapped Mst. Shazia, aged about 22, years alongwith her two minor daughters namely Ayesha and Iqra and while kidnapping the said lady also taken away gold ornaments weighing about two tola and cash Rs.50,000/-

3. The case of the applicant/accused as averred in the bail application is that the applicant/accused is innocent and has committed no offence and he has been falsely implicated in the instant FIR with malafide intentions and ulterior motives. It is also averred that the applicant/accused was not present at the time of recording of statement under Section 164 Cr.P.C. of alleged abductee and no opportunity for

cross examination was given to the accused. Further averred that no medical of the alleged abductee was conducted. The FIR was lodged after a delay of seven (7) days. It is also averred that alleged abductee was pronounced divorce by her husband, son of the complainant about five years ago, the abductee thereafter started to live in Karachi alongwith her children. Since, the alleged abductee was facing hard time being lady therefore, in order to save her and her minor children's future and lives she entered into freewill marriage with the applicant/accused. It is also the case of the applicant that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. therefore, the matter requires for further inquiry.

4. The learned Addl.P.G. for the state has opposed the bail application and argued that for the purposes of grant of bail in case of offences falling within the non-prohibitory clause of section 497, Cr.P.C, the conduct of the accused/applicant brings his case within the exceptions of the general rule. The learned Addl.P.G. has further argued that the applicant/accused is involved in heinous crime of kidnapping and rape. In this regard he has also referred the statement of abductee recorded under Section 164 of Cr. P.C. which he has filed in the through his statement dated 07.11.2016, wherein she fully implicated the applicant/accused, therefore, he is not entitled to the concession of bail in the present case.

5. After giving careful consideration to the arguments of the learned Addl.P.G, perusal of the record and with his able assistance, I find that the applicant/accused is nominated in the FIR with specific role that he alongwith co-accused abducted Mst. Shazia alongwith her two minor children and committed rape with abductee. The abductee Mst. Shazia after getting released from the clutches of applicant/accused, straight away went to Police Station Gulistan-e-Jauhar, Karachi, and subsequently, recorded her statement under Section 164 Cr.P.C. before the concerned judicial Magistrate, wherein she while fully implicating the applicant/accused, has stated that she is a married woman and her second Nikah (Free-will Marriage) was performed with the

applicant/accused against her will/wishes, during illegal confinement. In the light of the above the offences as mentioned in the subject FIR, though falling within the non-prohibitory clause of section 497, Cr.P.C, yet the conduct of the applicant/accused bring his case within the exceptions of the general rule. Thus, I am of the considered view that the applicant/accused is not entitled to the concession of bail at this stage. Accordingly, this bail application is dismissed.

6. Needless to mention that the observations made herein above are tentative in nature, which shall not influence the trial Court in any manner while decided the case.

JUDGE