

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 50 of 2022

Applicants : (1) Mst. Zarina Khatoon w/o. Muhammad Ashraf (2) Muhammad Dildar s/Muhammad Ashraf and (3) Mst. Nargis d/o. Muhammad Ashraf, through Mr. Azmat Hussain, advocate

Respondent : The State, through Mr. Faheem Hussain Panhwar, D.P.G.

Date of hearing : 23.02.2022
Date of order : 23.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicants/accused (1) Mst. Zarina Khatoon w/o Muhammad Ashraf (2) Muhammad Dildar s/o Muhammad Ashraf and (3) Mst. Nargis d/o Muhammad Ashraf being abortive to get the relief of pre-arrest bail from learned IIIrd Additional Sessions Judge, Karachi-South in B.B.A. No. 33 of 2022 vide order dated 10.01.2022, through instant application seek the same relief from this Court in Crime/FIR No. 171 of 2021, registered under sections 363/34, P.P.C. at P.S. City Court, Karachi. The applicants were admitted to interim bail by this Court vide order dated 12.01.2022, now the matter is fixed for confirmation of interim bail or otherwise.

2. As per F.I.R. lodged by the complainant Mst. Laraib d/o Akhtar Ali, on 31.12.2021, her ex. Husband Abdul Sattar Shah filed H.C.P. No. 3148 of 2021 under section 491 Cr.P.C. before the Court of learned VIth Additional District Judge, Karachi-West. On 13.11.2021 he alongwith her mother Fozia and minor baby Sidra, aged about two years, appeared before the said Court where Abdul Sattar Shah, his mother Zarina Begum, brother Dildar Shah and sister Nargis also came. The Court directed that the custody of the minor shall remain with her mother, whereafter Abdul Sattar Shah requested the presiding officer to allow him to talk with the complainant, which request was allowed. During such talks, at about 10:30 a.m., minor baby went to his father, who handed over her to his

sister Nargis and asked her to take the minor baby outside the Court room. Meanwhile, the learned presiding officer demanded C.N.I.C. from the complainant which was handed over by her and after completion of the process when she looked behind, she did not find minor baby, who was kidnapped by the applicants, for which they and co-accused Abdul Sattar Shah were booked in the aforesaid F.I.R.

3. The learned counsel for the applicants contends that the applicants are innocent and have falsely been implicated in this case by the complainant with mala fide intention and ulterior motives in order to harass and humiliate them and to blackmail them just to take huge amount from them; that the minor baby was taken by her real father and the applicants do not know her whereabouts; that the minor baby is in custody of her real father; hence, no case of kidnapping has been made out; that there are contradictions in the statement of complainant recorded in HCP No. 3148 of 2021 and in the F.I.R.; that applicant Dildar was not present at the time of alleged incident as at that time he was busy in teaching to his students in online classes; that there is delay of one month and 18 days in lodging of the F.I.R. for which no plausible explanation has been furnished by the complainant, that applicant Mst. Zareena Begum is a heart patient and unable to go upstairs and runaway; that it is a fit case for further enquiry, thus the present applicants are entitled for the concession of bail. In support of his contentions, learned counsel has relied upon the case of *Muhammad Ashraf v. S.H.O. and others* (2001 P Cr. L J. 31).

4. On the other hand, learned D.P.G. opposes grant of bail to the applicants on the ground that they alongwith co-accused Abdul Sattar Shah forcibly took away minor baby from the lawful guardianship of the complainant from Court premises; therefore, they are not entitled for the concession of pre-arrest bail.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. It appears from the perusal of the record that the complainant appeared, alongwith minor baby Sidra, before the Court of VIth Addl. Sessions Judge, Karachi-West to attend the Habeas Corpse Petition No. 3148/2021 filed by her ex. husband/ co-accused Abdul Sattar. The applicants are the mother, sister and brother of the said co-accused, who were allegedly present before the said Court on 13.11.2021 when the co-accused Abdul Sattar handed over minor Sidra to his sister Nargis and thereafter, the applicants disappeared from the Court. It also appears that the said Court after the alleged incident issued NBWs against the co-accused and directed to SHO Manghopir for his arrest and production of minor Sidra but till date she could no be traced out. The alleged offence was committed by the applicants in furtherance of their common intention in Court premises.

7. From the tentative assessment of the evidence on record, it appears that the prosecution prima facie has sufficient evidence against the applicants to connect them with commission of alleged offence. The counsel for applicants has not been able to point out any special feature of the case entitling the applicants to grant of extra-ordinary concession of pre-arrest bail. Pre-requisites for such concession i.e. malice and ulterior motive, either on the part of complainant or the police are conspicuously missing in the case. Accordingly, this application is dismissed. The interim bail granted to applicants, vide order dated 12.01.2022, stands recalled.

JUDGE

Athar Zai