

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.**

**Cr. B.A. No. D- 673 of 2013.**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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**For hearing.**

Present:

**Mr. Justice Ghulam Sarwar Korai &  
Mr. Justice Naimatullah Phulpoto.**

Mr. Muhammad Iqbal Mahar Advocate for applicant/accused.  
Mr. Abdul Rehman Kolachi, APG for the State.

Date of hearing: 07.01.2014.

Date of announcement: 08.01.2014.

**ORDER**

**Naimatullah Phulpoto, J;** Applicant/accused Abdul Waheed alias Irfan seeks post arrest bail in Crime No. 64 of 2013, registered at Police Station, Sorah, on 27.06.2013, under Sections 365-A, 392, PPC & 7 ATA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by complainant Muhammad Haneef on 27.6.2013 are reproduced as under:

"Complaint is that I use to labour. I have below detailed Motorcycle. Yesterday on 26.6.2013 at evening time I my brother Abdul Razzak aged about 25/26 years and Marot Shah Nawaz S/o Karim Bux Khaskheli set out together on motorcycle with own work towards village Bozdar Wada. My brother Abdul Razzak was riding Motorcycle. We were going on Road leading from Kathor towards Thari Mirwah when at 5:00 p.m. reached near alone gave one red colour Car without number plate crossed us from which four persons got down. Out of them we identified two persons 1. Ahmed Bux alias Bakhat alias Bakho S/o Abdullah Jamro R/o Village Gul Muhammad Jamro Taluka Kotdiji, 2. Waheed alias Irfan Shar and two unidentified persons who have been seen well and we would identify them on seeing again. They directed their pistols towards us and challenged that no one

**ORDER SHEET.**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.**

raise cry. Due to fear of weapons we remained silent. Accused Ahmed Bux Jamaro and Waheed alias Irfan forcibly got my brother Abdul Razzak sit in Car and unidentified persons kept us away. Within our sight one unidentified person drove away on our Motorcycle towards Thari Mirwah. Thereafter all three accused persons told us that we accused are abducting him and you ( complainant) after paying 5 lacs rupees may take your man. Thereafter all three accused persons went away in Car towards Thari Mirwah. Thereafter we raised cries and followed the accused persons but up to now we could not know about my abducted brother and Motorcycle. Now I have come and complain that the above-accused persons have abducted my brother Abdul Razzak for ransom purpose and have robbed my Motorcycle. I am complainant and request for investigation

3. After registration of FIR, the police visited place of wardhat, recorded 161 CrPC statements of PWs, arrested applicant/accused and on conclusion of investigation challan was submitted against accused persons for the above referred sections.

4. Bail application was moved on behalf of applicant/accused, same was rejected by learned Judge, ATC, Khairpur vide order dated 27.11.2013. Thereafter, applicant/accused approached this court.

5. Mr. Mohammad Iqbal Mahar, learned Counsel for applicant/accused mainly contended that complainant Mohammad Hanif, abductee Abdul Razak and PW Shah Nawaz have filed affidavits in which they exonerated the applicant/accused from the commission of offence and prosecution case is doubtful. He further submitted that according to Government primary school, Haji Mohammad Zaman, Taluka Naraz district Khairpur, the applicant/accused was born on 4.6.1996 and he was tender aged at the time of incident. He has further submitted that applicant/accused is student and his studies suffer and he is in the jail along with criminals and his future will be ruined. In support of his contentions, he relied upon the following case-law:

**ORDER SHEET.**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.**

- i. Muhammad Najeeb v. The State (2009 SCMR 448).
- ii. Muhammad Moosa and others v. The State (2011 SCMRA 1612).
- iii. Syed Amanullah Shah v. The State and other (PLD 1996 SC 241).

6. Learned APG opposed the application on the ground that bail application is the tentative assessment of the evidence, mere filing of affidavits by the PWs would not shake up the prosecution case. He argued that case is fresh one and applicant/accused is not entitled for concession of bail.

7. Record reflects that the complainant Mohammad Hanif, abductee Abdul Razak and PW Shah Nawaz have filed their affidavits in which they have exonerated the applicant/accused from the commission of offence. Today, complainant Mohammad Hanif and abductee Abdul Razak appeared before this court and admitted contents of affidavits and stated that they have sworn affidavits without any pressure. Learned APG could not controvert the submission of learned counsel for the applicant/accused that the applicant/accused is a student and he is in jail along with criminals. Apparently, affidavits of PWs have created reasonable doubt with regard to participation of applicant/accused in the crime. As such, applicant cannot be deprived of benefit of bail in such a situation. Above all else when ultimate conviction, if any, repairs the wrong caused by mistaken relief of bail it would be rather harsh and even unjust to decline bail to the applicant/accused. Rightly, reliance has been placed upon the case of Muhammad Najeeb (supra) in which Hon'ble Supreme Court has been pleased to observe as under:

"We have considered the contentions raised at the Bar and have also gone through the material brought on record in minute particulars. Though initially petitioner was nominated in the FIR by the complainant as an accused but later on through affidavit he stated that he is satisfied with regard to the innocence of the petitioner and does not want to proceed with the matter. This

**ORDER SHEET.**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.**

aspect of the matter has not been taken into consideration by the Courts below. We without touching the merits of the case are of the view that case of petitioner is of further inquiry. Accordingly, this petition is converted into appeal and is allowed. Appellant Muhammad Najeeb is granted bail subject to furnishing surety in the sum of Rs. 200,000/- (Rupees two lacs) with PR bond in the like amount to the satisfaction of the trial court".

8. For the above stated reasons and while relying upon the above cited authorities, prima-facie, a case against applicant/accused requires further enquiry as contemplated under sub-section (2) of Section 497 Cr.P.C. Hence, concession of bail is extended to applicant/accused Abdul Waheed subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two lacs) and PR bond in the like amount to the satisfaction of trial Court.

9. Needless to say, observations made hereinabove are tentative in nature. The trial court shall not be influenced by such observations while deciding the case on merits.

**J U D G E**

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