

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.73/2021

Applicant : Asif Raza,
through Mr. Ghulam Murtaza, advocate.

Respondent : The state,
through Ms. Seema Zaidi, DPG.
Mr. R.B. Qureshi advocate for complainant.

Date of hearing : 17.03.2021.

Date of order : 17.03.2021.

ORDER

SALAHUDDIN PANHWAR, J. Interim pre arrest bail was granted to the applicant in Crime No.1208/2020 u/s 365-B/34 PPC (added in remand order as sections 342/337-F(i)/337-A(i) PPC), PS K.I.A Karachi, on 15.01.2021, on date of hearing aforesaid matter came up for confirmation or otherwise when after hearing the parties, interim pre arrest bail was recalled, following are reasons thereof.

2. Prosecution's case is that complainant lodged FIR with statement that Mst. Marvi Zahid is his business partner, her parents are not alive; on 01.12.2020 at 2100 hours when complainant contacted her on phone she informed that she will come to him till 2300 hours but she did not come. On 02.12.2020 complainant received phone call of Mst. Marvi's friend namely Saima who informed the complainant that Mst. Marvi is missing since last night and her mobile phone is off; complainant went to the Flat of Mst. Marvi at 1700 hours on same day and found the door of flat opened; on checking her car in parking area found its door opened, on collecting

information it transpired that Ghulam Hussain had kidnapped Mst. Marvi Zahid d/o Zahid Hussain with intention to commit zina with her.

3. Counsel for accused / applicant argued that present applicant is not nominated in the FIR nor any role is attributed to him; that complainant with malafide intentions has falsely registered the present FIR as there is serious doubt of immoral relations between the abductee and the complainant and presently abductee, who is wife of accused Ghulam Moinuddin, had left the house of accused Ghulam Moinuddin and he has filed a suit for restitution of conjugal rights against the said abductee; that place of incident is an apartment secured by guards and with CCTV cameras yet no guard as witness or footage of CCTV was produced; place of incident is thickly populated area yet no independent witness was associated; abductee was not recovered from the custody of applicant and her statements under section 161 and 164 show contradictions creating serious doubt; learned 7th ADJ has already granted bail to one of the o-accused Tabish hence under rule of consistency applicant is also entitled for same relief. He has relied upon 2015 YLR 1777, 2010 PCrLJ 113, 2012 MLD 1958, 2018 PCrLJ 1025 and 2017 PCrLJ Note 243 (Lahore).

4. Learned counsel for complainant has contended that the victim has nominated the applicant/accused in her statement under section 164 CrPC with specific role; that freewill and nikahnama are fabricated; that accused maltreated the victim and allegations are supported by medical evidence hence bail is liable to be recalled. Reliance was placed on 2020 MLD 1455, 2009 PCrLJ 409 and 2014 YLR 814. Learned DPG opposed the bail by adopting the contentions of counsel for complainant.

5. At the outset, it is worth reminding that through instant application the applicant is seeking pre-arrest bail therefore, it is worth

reminding to *all* that such *relief* in Criminal Administration of Justice is known as an '*extra ordinary relief*'. The use of '*extra ordinary*' itself is sufficient to *safely* include that such relief is not available in '*normal*' circumstance (s) but only in '*exceptional*' circumstances. The existence of such '*exceptional circumstances*' shall be duty of the person (accused), seeking such '*extra ordinary relief*' which include co-existence of:

- a) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of Section 497 of Code of Criminal Procedure i.e unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- b) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonour him;

so held in the case of 'Rana Muhammad Arshad v. Muhammad Rafique & another (PLD 2009 SC 427). It is also needful to add that demand of co-existence of above *two* was / is purposeful because preventing arrest of an accused clogs the very mechanics, ongoing or imminent investigation process, which may result far reaching consequences including that of loss or disappearance of evidence (s), therefore such relief would not be available to **every accused** but only those who establish co-existence of two ingredients. I am guided with the case of 'Ghulam Farooq Channa v. Special Judge ACE (Central-I), Karachi and another 2020 PLD SC 293 wherein purpose of allowing such an *extra ordinary relief*, with reference to non-bailable/cognizable offences *only*, has been detailed as:-

"4. Grant of bail to an accused required in a cognizable and non-bailable offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of 'Hidayat Ullah Khan v. The Crown' (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigours of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended

for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, *prima facie* supported by material and evidence constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact, it is certainly not a substitute for post arrest bail.

6. I would add that above *criterion* is meant for pre-arrest bail application (s) in *ordinary* crimes but the instant case relating to the weakest of our society i.e '**woman**' who, *allegedly*, not only was abducted but tortured therefore, I would say that the *plea* of *mala fide* in such like cases needs to be weighed a *little* heavier than ordinary cases.

7. While keeping in view the above settled-principles, I have examined the available material. I would also add that in the instant matter the applicant / accused is directly named by the victim in her statement, recorded under section 164 CrPC, which too with specific role with allegation that she was maltreated by applicant alongwith others mercilessly and such version is supported by medical evidence. The WMLO found multiple cigarette burn marks on the person of victim which, *normally*, can't be self-caused for involving '**innocents**' by a woman while owning her abduction; remaining at mercy of the '**strangers**' because such like owned allegations shall result in raising number of questions about the character and remaining life of the '*victim woman*' therefore, *normally*, none would prefer owning such allegations unless the record reflects existence of such a *motive*. *Prima facie*, the applicant / accused has brought no *specific* *mala fide* on part of the victim which could be believed for owning such life effecting allegation (s) which, too, having self-caused such injuries. PWs supported version of prosecution in their statements u/s 161 CrPC.

8. So far as contention that Mst. Marvi is wife of accused Ghulam Mohiuddin it would suffice to say that she in her statement u/s 164 CrPC

stated that accused persons had forcibly taken her thumb impression on a nikahnama which (taking thumb mark) is always from an abducted one. Such plea, I would add, may have been of any help if such document (s) would have got some affirmation during course of investigation but during investigation Justice of Peace concerned filed his report that freewill is false, so was the version of Nikah Registrar with regard to Nikahnama therefore such document (s) are not of any help to prove any *mala fide* on part of the complainant and victim. I would add that number of law (s) are being made so as to protect and save the women as well to create a sense of '**security for women**' couple with sense of '**deterrence for ill-doers**' but still we witness such like crimes where the wrong doers dare to engineer such like document(s) (found denied by *claimed* writers, during investigation) so, per *tentative* permissible assessment for bail matters, such documents are not of any help. Referral to contradiction (s) in 161 and 164 Cr.PC statements are not worth appreciating at this stage because the same would fall within meaning of deeper appreciation of evidence which, *legally*, is not permissible. The applicant / accused, *prima facie*, appears to be linked with the offence with which he stands charged.

9. Since pre arrest bail is to be granted to rescue a person from his unjust arrest and humiliation at the hands of police *only* but in this case applicant/accused has not brought any such evidence to suggest that he has been implicated with malafide intentions or ulterior motives; moreover the offence alleged is of moral turpitude. Hence applicant Asif Raza is not entitled for concession of bail.

JUDGE