

IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No. 1531 of 2022

Date	Order with signature of Judge
Applicants :	1) Asghar Ali S/o. Faiz Ahmed 2) Hafiz Ghulam Mustafa S/o. Muhammad Haleem. through Mr. Muhammad Amir Niaz Bhadera, advocate.
Respondent No.1:	The State. through Mr. Abrar Ali Khichi, Addl. P.G. Sindh.
Complainant :	Syed Mehdi Ali Kazmi. through Muhammad Jibran Nasir, advocate.
Date of hearing:	05.09.2022.
Date of order :	09.09.2022

Salahuddin Panhwar:- Precisely the relevant facts of the prosecution case are that Complainant Syed Mehdi Ali Kazmi, lodged FIR bearing Crime No. 159/2022 under Section 364-A PPC at PS Al-Falah Korangi, Karachi, wherein it is alleged that his daughter Dua Zehra aged about 14 years has been abducted by unknown person. During investigation, it transpired that abductee Dua Zehra contracted marriage with one Zaheer Ahmed and applicant No.1 is witness of such *Nikah* whereas, applicant No.2 is *Nikah Khuwan* of alleged underage marriage. According to prosecution, the bride is aged about 15 years, therefore, she was not competent to contract marriage with co-accused Zaheer Ahmed under the Sindh Child Marriages Restraint Act, 2013, the *Nikah* Registrars or other persons who solemnize marriages were under legal obligation to scrutinize credentials at the time of *Nikah* and must ensure that the bride and groom are aged 18 years or above. However, it is alleged that in the present case, no such exercise was undertaken by the applicants, hence, they along with bride and groom are liable to be prosecuted. Besides, prosecution plea is that Dua-e-Zehera who is minor was abducted and thereafter underage marriage was solemnized, therefore, this is also a case of human trafficking. It is pertinent to mention that during investigation statement of victim/accused Dua-e-Zehera was recorded wherein she contended that being adult she has contracted marriage with

Zaheer Ahmed on her own freewill, volition and without any coercion or pressure, she in her statement has also negated the version of abduction.

2. Learned counsel for the applicants has relied upon case laws reported as **(2017 P.Cr.L.J Note 130)**, **(2018 P.Cr.L.J Note 175)** and **(2020 P.Cr.L.J 245)**, on the plea that offence which is alleged against the applicants is punishable upto three years, thus not falling within prohibitory clause, however, case of abduction is denied by the prosecutrix, therefore, applicability of section 364-A requires further probe, hence, applicants may be admitted for bail.

3. After hearing the learned counsel for the respective parties, Addl. PG and examination of material available on record, it transpires that the case of the prosecution is that a minor girl aged about 15 years was abducted and was forced to contract marriage, which obviously is an offence under Sindh Child Marriages Restraint Act 2013. Needless to mention that while deciding the bail application, only tentative assessment is to be permissible. Here in the present case star witness is Dua-e-Zahera, in her statement recorded under Section 164 Cr.P.C, not only denied her abduction and forced marriage, but she also claimed that being major she has not committed any offence. In these circumstances, a case for further probe into the guilt of the applicants is made out.

4. With regard to the case law reported as **(PLD 1962 (W.P) KARACHI 886)**, **(1971 SCMR 14)**, **(PLD 1972 LAHORE 121)**, **(1984 SCMR 386)**, **(PLD 1984 SC 95)**, **(1986 SCMR 564)**, **(2018 P.Cr.L.J NOTE 16)**, **(2021 SCMR 1466)**, **(2021 MLD 1683)**, **(PLD 2022 ISLAMABAD 228)** and **(2022 SCMR 216)**, on the plea that since Dua-e-Zehera was minor, therefore, her statement under Section 164 Cr.P.C. is premature and cannot be relied upon, it is germane to say that in criminal administration of justice; each case is to be decided on its' own peculiar facts and circumstances, therefore, by examination of the above case law, it appears that facts and circumstances are entirely different and even some of the cases are pertaining to appeals, thus such precedents are not helpful and cannot be relied upon while deciding the instant bail application.

5. Accordingly, applicants are admitted to post arrest bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) each and P.R bond in the like amount to the satisfaction of the trial Court.

The observations made hereinabove are tentative in nature and learned trial Court shall not be influenced in any manner, while deciding the case on merits.