

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1848 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

18-01-2023

Mr. Waqar Alam Abbasi, Advocate a/w applicant.
Mr. Farooq Kolachi, Advocate for complainant.
Mr. Muntazir Mehdi, Addl.P.G. a/w Ms. Saira Memon, I.O.

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Omar Sial, J: Sahib Khan Chandio has sought pre-arrest bail in crime number 118 of 2022 registered under section 365-B, 376, 109, 506(b) and 34 P.P.C. at the Bin Qasim police station on 02.04.2022. Earlier, his application seeking bail was dismissed on 12.09.2022 by the learned 4th Additional Sessions Judge, Malir.

2. A background to the case is that the aforementioned F.I.R. was registered on the information of Mohammad Ayoub Kolachi who reported an incident that had occurred earlier that day. Kolachi recorded that his 15 year old daughter Kaniz Fatima had gone to school on an auto-rickshaw but that she had not come back home at the scheduled time. Upon inquiry, the family learned from the school that Kaneez Fatima had not even come to school that day. A case under section 365-B P.P.C. was registered against the auto-rickshaw driver by the name of Ali Raza.

3. Ali Raza told the police that he had dropped Kaneez Fatima at her school in the morning but when he went back to pick her up at home time, the watchman of the school told him that Fatima had not come to school. He had then informed her father of her absence. The record reflects that at some time subsequent to the disappearance of his daughter, her father, the complainant, recorded another statement in which he nominated (i) Mohammad Tahir Jatoi (ii) Khuda Baksh Jatoi and (iii) Mohammad Sultan as the culprits.

4. It transpired in the police investigation that Kaneez Fatima had married Mohammad Tahir Jatoi out of her own free will and in that connection had appeared before the Sukkur Bench of this court to record her statement that she had married Tahir. At that stage, a charge under section 3 and 4 of the Sindh Child Marriage Restraint Act, 2013 was also included against Mohammad Tahir Jatoi. Kaneez Fatima was sent to the Darul Aman on the instructions of this Court and it appears that some days later she opted to go back home with her parents. Sometime around 23.05.2022, Kaneez Fatima took a somersault on her earlier stance and now alleged that Mohammad Tahir Jatoi had kidnapped her and that all her appearances in court and her earlier statements were all obtained from her under duress. The present applicant was included as an accused in this case because ostensibly Mohammad Tahir Jatoi had taken Kaneez Fatima to the applicant's home where she had changed from her school uniform to normal everyday clothes and had then left with Jatoi.

5. Learned counsel for the applicant has argued that the present applicant has nothing to do with the whole saga; that he is not accused of rape nor of kidnapping and the only allegation, which too according to him was false, was that the girl had been brought to the applicant's house and that she changed her clothes there. He further argued that Kaneez Fatima had married Mohammad Tahir Jatoi and that all the paperwork in that regard is on record. He argued that no medical check-up of the alleged victim was done as she herself declined to be checked. To the contrary, the learned APG supported the impugned order. The complainant was present along with his wife and the alleged victim. They stated that they did not want to engage a counsel. Subsequently, the complainant and the victim both declined to appear in court in response to court orders and also declined to appear when the investigating officer was sent to procure their attendance. I have heard the counsels. My observations and findings are as follows.

6. Prima facie there is documentation on record which reflects that Kaneez Fatima may be an adult; had married Mohammad Tahir Jatoi with

her own freewill; appeared herself before the District Court, Sukkur as well as High Court, Sukkur and represented that she had not been kidnapped nor had she been raped and that she had married Jatoi with her own freewill; she had sought quashment of the F.I.R. registered against her husband; at this stage her claim that she was forced to do everything she did prima facie does not sound too convincing as the record shows that she was sent to the Darul Aman on her own and that she was exposed alone to several police officers, who she could have informed of her plight. For reasons, that have to be explored and discovered at trial, she chose to remain silent. The veracity and truth of Kaneez Fatima's statements will have to be evaluated at trial.

7. There appears to be no witness who saw Fatima being kidnapped by anybody from the gate of the school where she was dropped off by the auto-rickshaw driver. There also appears to be no evidence that would prima facie establish the charge of rape, which even in any case is not alleged against the applicant. It is correct that the only allegation against the applicant is that the girl was taken there by Jatoi. This simple fact, even if true, is not sufficient to deny the applicant bail. Whether or not the applicant shared a common intention with Jatoi, will have to be determined after evidence is led at trial.

8. The facts of the case are such that malafide and spite of the complainant, who himself is a police officer deployed in the investigations department, against everybody he suspected being involved in the whole episode, cannot certainly be over-ruled at this preliminary stage.

9. For the above reasons, the interim pre-arrest bail granted to the applicant is confirmed on the same terms and conditions.

JUDGE