

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 2347 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

26.01.2023

Mr. Dur Muhammad Mallah, Advocate for the Applicant.
Mr. Ali Haider Saleem, Addl. Prosecutor General, Sindh.
Ms. Tabassum Yousuf, Advocate along with Complainant as well as victim.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Kaleemullah seeks his release on post arrest bail in Crime No.876/2022 of P.S Sachal, Karachi, under Section 365-B PPC. After completion of investigation, the case has been challaned by the police which is now pending for trial before the Court of 5th Addl. Sessions Judge, Malir Karachi vide Sessions Case No.4728/2022 (re-the State Versus Kaleemullah). The applicant moved two bail applications before the Courts below which were declined by orders dated 30.09.2022 and 24.11.2022 respectively; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that the applicant is innocent and has not committed any offence; however, alleged abductee voluntarily entered into Nikkah with him, therefore, such mutual contract is legal one and applicant cannot be burdened with the charge leveled by the prosecution. Next submits that alleged abductee, after her recovery, appeared before the Court of 4th Judicial Magistrate, Malir Karachi on 21.09.2022 where she was examined under Section 164 Cr.P.C. In her 164 Cr.PC statement, alleged abductee had not deposed even a single word

regarding committing *zina-bil-jabr*, therefore, case against applicant requires further enquiry. In support of his contention, learned counsel places reliance upon the case of *MUHAMMAD YOUSAF Versus The STATE and another* (2020 P.Cr.L.J 245).

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that applicant is nominated under the FIR with specific role of abduction; however, he could not controvert the fact that alleged abductee in her 164 Cr.P.C statement has not deposed against applicant regarding commission of *zina-bil-jabr*, with her.

5. Learned counsel for the complainant also opposes the bail application and submits that per medical certificate, victim is under age and her case falls under Sindh Child Marriages Restraints Act, 2013; however, police have not added said section in the challan nor filed any other FIR regarding the said offence. She further submits that abductee has implicated the applicant, therefore, he is not entitled for the bail.

6. **Heard arguments, record perused.** No doubt, the applicant has been nominated under the FIR with specific role of abduction with intention to commit *zina-bil-jabr* with alleged abductee. The abductee at the time of her 164 Cr.P.C statement had not leveled allegation of committing *zina-bil-jabr* with her, against the applicant and even she has not deposed that she was enticed away or abducted by the applicant for the purpose of committing *zina-bil-jabr* with her. She had further deposed that applicant had kept her in his house; however, was not harassed or humiliated in any manner. As far as allegation of abduction is concerned, not a single witness was cited or nominated by alleged abductee in her 164 Cr.P.C statement except the words that applicant allegedly asked her to accompany with him, she followed which culminated into present FIR.

7. Though the applicant is in custody right from the date of his arrest; however, no any legally admissible piece of evidence has been brought on record by the prosecution during investigation except mere allegation of abduction against the applicant, which may connect him with commission of the alleged offence. As far as objection raised by learned Addl. P.G, Sindh as well as counsel for the complainant that alleged abductee is a minor and

was not competent to enter into Nikkah, is concerned, per medical evidence/age certificate issued by Woman Medico Legal Officer concerned, her age has been declared about 16/17 years. It will be advantageous to reproduce the opinion of WMLO who issued age certificate bearing No.PSAC No.221/2022 in favour of alleged abductee, which reads as under;_

“As per Biological her age 16-17 years (more toward 17 years), physical age arrangement 16-17 years (closely to 17 years) and dental age 16-17 years (not more than 18 years) so it can be calculated that her age is 16-17 years close to 17 years.”

8. Therefore, in the light of medico legal opinion, alleged abductee could be termed adult and was capable to enter into Nikkah as well as to give consent of marriage. In the light of different opinions and laws it is uncertain as to the age of a girl upon which she can enter into Nikkah as such. Reference can be derived from the case of Hafiz ABDUL WAHEED Versus Mrs. ASMA JEHANGIR and another (PLD 2004 Supreme Court 219). Moreover, the abductee had not denied to have entered into Nikkah with applicant nor after her recovery she had filed any suit seeking dissolution of marriage/Nikkah by way of Khula etc. It is well settled principle of law that mere involvement in heinous crime is no ground to withhold the bail to an accused who otherwise becomes entitled for the concession of bail. It is also well settled principle of law that if a person is wrongly admitted to bail then it can be repaired with by putting him in jail at the time of conviction. However, in case, after remaining in incarceration for long period, if he may be found innocent then he cannot be compensated for the golden days he had spent under incarceration during pendency of trial. Reliance can be placed upon case of MANZOOR AND 4 OTHERS Versus THE STATE (PLD 1972 Supreme Court 81). In case of Manzoor and 4 others (Supra), Honourable Supreme Court of Pakistan has laid down following dictum;_

“.....The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.”

9. In the circumstances and in view of above discussion, I am of the opinion that applicant has made out a good prima facie case of further

inquiry within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Kaleemullah son of Hazar Khan Soomro** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

10. The observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

11. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A