

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 1321 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

05.07.2023

Mr. Amjad Ali Dayo, Advocate for the applicant
Ms. Rubina Qadir, APG.
PI Ch. Ghazanfar Ali P.S. Zaman Town, Karachi

1. Applicant Zohaib Hussain has impugned the order dated 31.10.2022 passed by learned VIIth Additional Sessions Judge Karachi East passed in FIR No.741/2022, under Section 365-B/34 PPC at P.S. Zaman Town, Karachi, whereby, his bail plea was declined.
2. The allegation against the applicant/accused is that he in conjunction with his co-accused abducted Mst. Laiba with intention to illicit intercourse.
3. Per learned counsel the victim never recovered from the possession of the applicant/accused, therefore, the ingredients of Section 365-B are not attracted in the instant case. He further contended that how the complainant party came to know the name of the applicant/accused, however, no animosity has been disclosed in the FIR, therefore, the case at hand needs further probe and applicant/accused is entitled for bail.
4. Conversely, learned Addl. P.G. argued that the name of the Applicant/accused is appearing in FIR with specific allegation that on the day and time of incident the Applicant/accused has forcibly kidnapped the victim for the purpose of committing Zina and the

Applicant/accused was arrested by the local police. He further submits that the statements of Complainant and victim were recorded under sections 161 and 164, Cr.P.C. in which they have fully implicated the accused persons in the commission of crime, prima facie shows the involvement of the Applicant/accused in a case of serious and heinous in nature and also falls within the prohibitory clause of section 497, Cr.P.C.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It has been straightway noticed that the FIR of this case was lodged promptly. Offence of abduction punishable u/s 365-B as defined u/s 362 PPC requires two essentials, removal of woman by force from one place to another under compulsion or through inducement by deceitful means and the object of force from one place to another under compulsion or through inducement by deceitful means and the object of such removal must be to compel her to marry any person against her will or in order that she could be forced or seduced to illicit intercourse. The Applicant/accused is not only named in the FIR but has been comprehensively described with specific role of kidnapping the victim Mst. Laiba. Complainant and Mst. Laiba (victim) in their statements recorded under sections 161 and 164, Cr.P.C. have implicated the Applicant/accused in the commission of crime/offence which appears serious and heinous in nature and the punishment of the offence as alleged against the Applicant/accused also falls within the prohibitory clause of section 497, Cr.P.C. Nothing on record that the Complainant and her daughter Mst. Laiba had any enmity with the Applicant/accused for falsely involved him in this case.

6. It is settled principle of law while entertaining bail plea of any accused that Court has only to see whether accused is connected with the commission of crime or not. Furthermore, the question of granting or refusing bail depends upon particular circumstances of each case. The discretion of grant or refusal of bail under section 497 Cr.P.C must be exercised on judicial principles. Bail is always under the discretion of the Court and this discretion is necessarily to be exercised upon the facts and circumstances of each case according to sound judicial principles. The settled position of law is that accused cannot claim bail as a matter of right in non bailable offence. The facts and circumstances of each and every case are to be kept in mind while deciding bail application¹.

7. For the foregoing reasons, I do not find merit in the bail application which stands dismissed.

8. Before parting with the above, findings are tentative in nature which renders no help to any party.

JUDGE

Aadil Arab

¹ PLD 1997 S.C 545 and 2002 SCMR 442