

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-317 of 2023

Date	Order with signature of Judge
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Applicant: Farhan Ali Marfani, through
Mr. Sikander Al Junejo, Advocate

Respondent: The State through Mr. Imran Mobeen Khan
Assistant Prosecutor General

Date of hearing: **25-08-2023**

Date of **Decision**: **25-08-2023**

O R D E R

Arbab Ali Hakro, J: Through this bail application u/s 497 Cr. P.C., applicant Farhan Ali s/o Abdul Razzaq Marfani, seeks admission to post-arrest bail in Crime No.32/2023, registered against him on 17.03.2023, at Police Station Kandhra, District Sukkur, u/s 365 and 34 PPC PPC. The applicant had previously applied for post-arrest bail in Bail Application No.789/2023, but the same was dismissed by the learned Additional Sessions Judge-II, Sukkur, vide order dated 11.05.2023. After that, the applicant approached this Court.

2. The case of the prosecution as set up in the registered FIR is that on 17.03.2023, at about 0130 hours, a police party of Police Station Kandhra headed by Abdul Jabbar Shaikh, during patrolling reached at Kandhra bypass near Showroom of Muhammad Ayoub Katbar where on the light of blooming bulbs as well as light of vehicle they saw five persons; two of them were armed with Kalashnikovs while three were armed with TT pistols, who were abducting Sahil s/o Sailab Rai and Preetam s/o Paro Mal from their silver colour car bearing registration No.BGB-959, at gun point and dragging them to palm groves . On this, the police party chased them and when they reached Kandri link road near kalar block at 4.00 hours, abductee Preetam met them and disclosed that the culprits had let him off due to fear of police while Sahil has been abducted. Consequently, instant FIR was registered against the unknown culprits.

3. At the very outset, it has been argued by the learned counsel that the applicant is innocent and neither he had abducted the alleged abductee

nor he was recovered from the applicant's possession. Per learned counsel, the applicant was rounded up by the police from the shop of his father on 17.03.2023, kept in illegal confinement for which his father filed an application u/s 491 Cr.P.C before Sessions Judge Sukkur. Thus, to justify his detention, this case was registered against him by concocting a false story to substantiate it. Learned counsel produced copy of application u/s 491 Cr.P.C bearing Cr.M.A. No.1308/2023 during arguments. He further argued that there is inordinate delay of 18 hours in registration of FIR for which no plausible explanation has been furnished by the complainant; contends that the applicant is not named in the FIR and his name is introduced by the alleged abductee in his statement recorded under section 161 Cr.P.C after about 28 days and too without any source which itself makes the case against the applicant one of further enquiry. Lastly he has submitted that the applicant is confined in jail, hence no longer is required for further investigation, as such the applicant is entitled for concession of bail. In support of his contention he has relied upon the case law reported as **Abdul Hakeem v. The State (2012 MLD 919)**, **Mujahid v. The State (2014 P.Cr.L.J 1185)**, **Shabbir and 5 others v. The State and another (2012 MLD 120)**, **Punnal Khan v. The State and others (2014 P.Cr.L.J 591)** and **Muhammad Ismail v. The State (2007 YLR 256)**.

4. Conversely, learned Assistant Prosecutor General appearing for the State vehemently opposed the bail application and submitted that there is absolutely no malafide on the part of complainant to falsely implicate the applicant in this case; the victim / abductee had recorded his statement under section 161 Cr.P.C before the police wherein he named the applicant with specific allegation of kidnapping along with co-accused; as such the nature of the offence is heinous one, therefore, applicant is not entitled for bail. He has lastly prayed that bail application may be dismissed.

5. I have heard learned counsel for the applicant, learned Assistant Prosecutor General for the State, and carefully examined the material on record.

6. From perusal of the record it transpires that the name of applicant Farhan Ali is not mentioned in the FIR and no specific role has been assigned by the complainant in his FIR against unknown person; the alleged incident is said to have occurred on 17.03.2023 at 0130 hours whereas the FIR thereafter was lodged at 1500 hours with delay of about 13 hours, however the distance between the police station and place of incident was about a half kilometer, there is no explanation as to why it took the complainant more than 13 hours to lodge the FIR. It further transpires that the alleged abductee recorded his

statement under section 161 Cr.P.C before the investigating officer after 28 days to the incident which reflects consultation as the abductee was present at the time of incident and he did not disclose the applicant's name to the complainant, so his implication at the later stage requires further probe. It is well settled proposition of law that any statement of prosecution witness recorded at a belated stage it loses its sanctity. Reliance is placed on the case of **Abdul Khaliq v. The State (1996 SCMR 1553)** and **Noor Muhammad v. the State (2020 SCMR 1049)**. Therefore the legality of 161 Cr.P.C statement of the alleged abductee at belated stage will be determined by the trial court keeping in view the principle enunciated by the superior Court on this behalf. It is also noted that as per contents of crime report on 17.03.2023 the police party was patrolling when at 130 hours they reached at Kandhra bypass near showroom of Ayoub Katbar and saw five persons duly armed with KKs, however, surprisingly all the culprits succeeded in fleeing away from the place of occurrence without a single fire made by them or by the police officials. In these circumstances, I am of the opinion that the case of applicant is one of further enquiry in terms of section 497 Cr.P.C

7. All the above facts that create a dent in the prosecution story. It is established principle of law enunciated by the superior court that the benefit of doubt can be extended even at bail stage. Reliance in this regard is placed in the case of **Muhammad Aijaz v.s The State (2022 SCMR 1271)**, **Muhammad Arshad v. The State (2022 SCMR1555)** and **Fahad Hussain v. The State (2023 SCMR 364)**. The punishment provided for the offence mentioned in the FIR is seven years, which does not fall within purview of the prohibitory clause of section 497 Cr.P.C. The applicant is stated to be behind the bars since the date of his arrest as such, he is no longer required for investigation of police.

8. Considering the above facts and circumstances of the case, the applicant has succeeded in making out the case for grant of bail on the ground of further enquiry as contemplated u/s 497 (2) Cr.P.C. Consequently the applicant is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) and P.R bond in the like amount to the satisfaction of the trial court.

09. Needless to add, the observations made herein above are tentative only to decide this bail application, which shall not in any manner influence the trial court at the time of trial /decision of the subject case.

JUDGE