

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1074 of 2023

Applicant : Farmanullah S/o Saeed Rasool
Through Mr. Shah Imroz Khan,
Advocate

Complainant : Gul Khan S/o Abdullah Khan
Ms. Gul Afshan Junejo, Advocate

Respondent : The State
Through Mr. Talib Ali Memon, Asstt.
Prosecutor General, Sindh

Date of hearing : 15.08.2023

Date of order : 15.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.284/2022 registered under Section 496-A/376 PPC at PS PIB Colony, after his bail plea has been declined by the VIIth Additional Sessions Judge, Karachi East vide order dated 13.08.2022.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated by the complainant; that the FIR is delayed about 5 days for which no plausible explanation has been given by the complainant; that in fact Mst. Sher Bano left her house and contracted marriage with applicant and thereafter she/alleged abductee appeared before the Civil Judge/Judicial Magistrate-IV Karak wherein she has confirmed that she has contracted marriage

with the applicant/accused; that in Section 164 Cr.P.C. statement she has simply said that she left her house and thereafter she was drunk something in cold drink as such she became unconscious and lost her senses; that as far as claim of the complainant that the applicant performed Nikah over Nikah is concerned, the complainant should approach before the Family Court so as to jactitation of marriage but the same is lacking in this case; that the applicant is in jail and is no more required for further investigation. He lastly prays for grant of bail.

4. On the other hand, learned counsel for the complainant has vehemently opposed for grant of bail and states that the name of the applicant transpires in the FIR with specific role that he has performed Nikah over Nikah with Mst. Sher Bano/alleged abductee, as such, he is not entitled for concession of bail. Learned Addl. P.G. also supports the version of the learned counsel for the complainant.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. The claim of the complainant Gul Khan is that the alleged abductee Mst. Sher Bano contracted marriage with him. Thereafter, the present accused has also performed Nikah over Nikah with her. However, record reflects that the alleged abductee appeared before the Civil Judge/Judicial Magistrate-IV Karak wherein she clearly stated that she has contracted marriage with present applicant. Such Nikahnama is also available on record. Further, during course of investigation, the alleged abductee appeared before the 8th Judicial Magistrate, Karachi wherein she has disclosed that she left her house with Farmanullah/accused; however, she was drunk something in the cold drink as such she became unconscious and lost her senses. However, in 161 Cr.P.C. statement, she does not confirm that she has previously contracted marriage with Gul Khan. Further, the allegation levelled against the present applicant/accused that he has performed Nikah over Nikah, as such, he has committed an

offence under Section 496(c) PPC. It is settled law that if any husband has made allegation that the accused has made Nikah over Nikah for which he has to file a Suit for jactitation of marriage before the Family Court and after obtaining judgment/decreed wherein it is proved that the applicant has performed Nikah over Niakh then the criminal liability will start and thereafter the complainant would be at liberty to file direct complaint or lodge the FIR but in the instant case, the same is missing. Learned counsel for the applicant also pleaded malafide on the part of the complainant to implicate the present applicant in this case falsely.

7. In view of the above, learned counsel for the applicant has made out a case for grant of post-arrest bail. Accordingly, the instant bail application is allowed. Applicant/accused named above is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees once lac only) and PR bond in the like amount to the satisfaction of the learned trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Kamran/PA