

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 1860 of 2023

Applicants/ Accused : Rashid son of Ghumman through Mr. Khursheed Jawed, Advocate.

Complainant : Fayyaz Ahmed son of Wali Muhammad through Mr. Muhammad Shahid Malik, Advocate.

State : Through Ms. Rahat Ahsan, Additional Prosecutor General, Sindh.

Date of hearing : 15-09-2023

Date of order : 15-09-2023

FIR No. 471 of 2022
U/s: 496-A PPC and Challan
U/S: 498/495/494/109/34
R/W Section 3(2) TIP Act
P.S. Hyderi Market, Karachi

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/Accused seeks post-arrest bail in the aforesaid crime after his application for the same was dismissed by the trial court on merits *vide* order dated 31.05.2023, and a second bail application was also dismissed *vide* order dated 16.08.2023 for the reason that no fresh ground for reconsidering bail were forthcoming. Learned counsel for the Accused prays that the impugned order referred to in the present bail application may be treated as one dated 31.05.2023 instead of the one dated 16.08.2023. Since this is the first bail application before this Court, I am inclined to do so. Order accordingly.

2. In the FIR lodged on 16.08.2022, the offence allegedly committed by the Accused is one under section 496-A PPC i.e. for enticing or taking away Ms. Tayyeba with the intent of illicit intercourse. The Complainant was Tayyeba's father who alleged that she was already married to one **Rashid s/o Maqsood (not to be confused with the Accused who is Rashid s/o of Ghumman)** but her

rukhsati had yet to take place; that the Accused, who resided in the neighborhood, used to make advances at her when she went and came back from work; that despite a complaint to his father, the Accused persisted; that on 15.08.2022 when Tayyaba did not return from work, the Complainant learnt from the neighborhood that the Accused had taken her away in a vehicle.

3. In October 2022, Tayyeba and the Accused apparently appeared before the Sukkur Bench of this Court with a petition (C.P. No. D-1240/2022) for protection against the FIR where Tayyeba denied that she had been married earlier to Rashid s/o Maqsood, and stated that she had married the Accused of her own free will. That petition was disposed of on 22.11.2022 with a direction to the police to conclude the investigation and to provide protection to the petitioners in accordance with law.

4. While investigation was on-going, both Tayyeba and the Accused came to see the Complainant at his residence on 08-03-2023, who called the police and who arrested both Tayyeba and the Accused. Thereafter, on 29.03.2023 a supplementary challan was submitted by the I.O. to implicate also the mother, brother and uncle of the Accused as abettors, and to book Tayyeba for offences relating to marriage under sections 494 and 495 PPC inasmuch as, in the meantime, the Complainant had produced a nikahnama to show that Tayyaba was already married to Rashid s/o Maqsood. Tayyeba was however granted bail by the trial court on 31.05.2023 in view of the fact that she was pregnant at that time.

5. Heard learned counsel and the Additional Prosecutor General Sindh and perused the record.

6. Orders dated 04.10.2022, 25.10.2022 and 22.10.2022 passed by a Division Bench of this Court at Sukkur in C.P. No. D-1240/2022 are *prima facie* evidence of Tayyeba's denial that she had ever married

Rashid s/o Maqsood, and of her acknowledgment that she had left with and married the Accused of her own free will. Her nikahnama with the Accused is also on the record. Her statement under section 161 CrPC is also to the same effect which she reiterates today in person before this Court. She also carries with her a baby that she says is out of wedlock with the Accused. Therefore, the allegation against the Accused that he had enticed away Tayyeba for illicit intercourse is belied by Tayyeba herself.

7. It is also a fact that Rashid s/o Maqsood, allegedly the first husband of Tayyeba, is nowhere to be found. He has neither come forth to give any statement to the I.O. nor is he arrayed in the challan as a witness. Given that fact, the alleged nikahnama between him and Tayyeba, and that too having been produced by the Complainant after considerable delay, appears to be doubtful. It is in any case a question yet to be determined by the trial court.

8. The offences alleged in the supplementary challan under sections 494 and 495 PPC are against Tayyeba, not the Accused. Tayyeba has already been granted bail by the trial court. Though column 6 of that challan also mentions offences under section 498 PPC and section 3(2) of the Prevention of Trafficking in Persons Act, 2018, the first section had been repealed long ago, and the mention of the latter appears to be a typographical error as nothing of the sort is alleged in the body of the challan. The offence of section 496-A PPC alleged against the Accused does not fall within the prohibitory clause of section 497 CrPC. Thus, bail becomes the rule and its refusal the exception.

9. There are also no reasonable grounds for believing that the Accused has committed the offence alleged; rather the case is clearly one of further inquiry falling within the ambit of sub-section (2) of section 497 Cr.P.C.

10. For the foregoing reasons, the Applicant, Rashid son of Ghumman, is granted bail in FIR No. 471/2022 subject to furnishing solvent surety in the sum of **Rs.100,000/- [Rupees One Hundred Thousand only]** alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

PA/SADAM

JUDGE