

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Bail Application No.487 of 2024

Applicant : Asif s/o Abdul Sattar Memon, through Mr. Masood Rasool Babar Memon, advocate

Respondent : The State, through Ms. Rameshan Oad, A.P.G.

Complainant : Muhammad Ismail s/o Ahmed, through Mr. Muhammad Hasham Laghari, advocate

Date of hearing : 14.06.2024

Date of order : 14.06.2024

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Asif s/o Abdul Sattar Memon seeks post-arrest bail in Crime No.165/2024, registered at P.S. Badin under Section 365, 34, P.P.C. His earlier application for the same relief being Criminal Bail Application No. 565 of 2024 was dismissed by the learned 2nd Additional Sessions Judge Badin, vide order dated 08.05.2024.

2. As per F.I.R., on 13.04.2024 at 2300 hrs. at Street of Abid Town, the applicant in furtherance of their common intention, along with an un-known co-accused, kidnapped Khalil Ismail Memon, 16/17, the son of complainant Muhammad Ismail, and wrongfully confined him in a place situated in front of Shah Qadri Graveyard; for that he was booked in the aforesaid F.I.R.

3. After hearing the learned counsel for the parties as well as A.P.G. and perusing the material available on record, it appears that the applicant is confined in judicial custody for last more than two months and the prosecution has already submitted the challan against him; hence, his custody is no more required for investigation purpose. The applicant has no previous record of indulging in any crime.

4. As per F.I.R., Malik Muhammad Muzamil and Allah Dino informed the complainant, who was sitting in his house, that at about 2300 hrs. they saw the applicant and an un-known accused forcibly abducting his son by making him sit on motorcycle; they follow them and saw that the accused took away him at the place situated in front of shah Qadri graveyard. Upon receiving such information, the complainant reached the place; they all three entered in the place, where they saw the accused persons standing there, who seeing them made their escape good by scaling over the wall. They recovered the alleged abductee. No explanation is available on record as to once the complainant received the information of abduction of his son, why did he not inform the police. Nothing is mentioned in the charge-sheet regarding ownership of the place where the alleged abductee was kept in wrongfully confinement. The alleged lapses on the part of the prosecution creating reasonable doubt about happening of alleged incident in a manner narrated in the F.I.R.

5. The punishment provided under the Statute for the offence under section 365, P.P.C. is imprisonment for seven years; as such, the alleged offences do not fall within the prohibitory clause of section 497, Cr. P.C. It is well-settled law that grant of bail in the offence not falling within the prohibitory clause is a rule and refusal is an exception. The Honourable Supreme Court of Pakistan in the case of *Muhammad Tanveer v. The State and another* reported as **PLD 2017 S.C. 733** has held that "*once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Court.*" The law is very liberal especially when it is salutary

principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception. In the instant case no exceptional ground exists for the refusal of post arrest bail to the applicant.

6. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.1,00,000/- (Rupees One Lac Only) and P.R. Bond in the like amount to the satisfaction of the Additional Registrar of this Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. In case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

8. Above are the reasons of my short order dated 14.06.2024.

JUDGE