

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 410 of 2024

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

08.04.2024

Mr. Maroof Hussain Hashmi, Advocate for the applicant.

Mr. Shahryar Khan, Advocate holding brief for Ms. Safia Lakho, Advocate for the complainant.

Ms. Seema Zaidi, APG.

1 Applicant Ghulam Abbas son of Ramzan Ali is seeking bail after arrest in FIR No. 657/2022 lodged under Section 365-B PPC at P.S. Defence, Karachi.

2. The allegation against the applicant/accused is that on 27.08.2022 at about 1700 hours he in conjunction with other malefactors abducted Ms. Misbah Noor.

3. It is inter alia contended by the learned counsel for the applicant/accused FIR was lodged with the delay of more than 30 days and the delay is also considered fatal in lodging the FIR. He further contended that the DNA as well as Chemical report are in negative, therefore, the applicant/accused is entitled for bail. He further contended that the guilt of the accused can only be proved by the prosecution at the conclusion of the trial, therefore, bail is a right of the accused at initial stage.

4. On the other hand, learned APG contended that the statement of victim was recorded under sections 164, Cr.P.C. in which she has fully implicated the accused person 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. Admittedly the incident as alleged is said to have occurred on 27.08.2022 whereas FIR thereof was lodged on 26.09.2022 with delay of about 30 days though distance between police station and place of incident occurs about 2 kilometers and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the Superior Court(s) to be fatal for the prosecution. As far as allegation of Zina-bil-Jabr is concerned, the medical evidence does not support the prosecution version, hence mere word against word is no ground to withhold the concession of bail to an accused when the ocular version does not get support from the medical evidence.

6. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant¹. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious,

¹ *Per Muhammad Ali Mazhar J. in Fahad Hussain v. The State (2023 SCMR 364)*

irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

7. I have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

8. As a result therefore, this bail application is allowed. Applicant Ghulam Abbas son of Ramzan Ali is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

9. Before parting, I would like to further observe that if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court.

JUDGE

Aadil Arab