

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail Application No.S-451 of 2023***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on O/objection at flag-A.
2. For hearing of bail application

Date of hearing **02.10.2023**

Mr. Wajid Ali Shaikh, Advocate for applicant alongwith applicant.

Syed Sardar Ali Shah Addl. Prosecutor General.

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**ORDER**

***KHADIM HUSSAIN SOOMRO, J;*** Through instant bail application, applicant/accused Sabir Ali son of Allah Dino Gurgej seeks pre-arrest bail in Crime No.29/2023 registered at Police Station, Tamachani District, Sukkur for offence punishable under Sections 365-B, 452, 504, 148, 149 PPC & 3TIP. Earlier, bail application of the applicant accused was declined by learned Additional Sessions Judge-II, Sukkur vide order dated 05.06.2023, hence the instant pre-arrest bail application.

2. The facts of the prosecution case are that complainant Asif Ali lodged FIR on 06.05.2023 at 1900 hours stating that about Ten months back, he contracted free will marriage with Tayyaba, daughter of Muhammad Zaheer Abbasi R/o Muree District Rawalpindi, who was residing with him in his village and the accused Hameedullah Abbasi and other were asking that they would teach lesson to them. On 24.03.2023, the complainant, alongwith his brother Parvez Ali, uncle Khadim Hussain, mother Hazoor Khatoon and wife Mst. Tayyaba, aged about 22 years and sister Mst. Saba aged about 21 years, with other inmates, went to sleep on separate cots, and electric bulbs were on; it was about 3:00 a.m. on 25.03.2023. The outer door was knocked, due to which inmates woke-up as it was also Sehri time. It is alleged that his uncle Khadim Hussain opened the door, saw and identified the accused, namely, Sabir Ali (applicant), Samiullah and Sanaullah armed with pistols and two unidentified persons with open faces, and they forcibly

entered in the house and started abusing and asked to remain calm. The accused, Sabir Ali, dragged the sister of complainant Mst. Saba from her arm, while accused Hameedullah dragged the wife of complainant Mst. Tayyaba from her hand, and they were taken away outside the house. The wife of complainant Mst. Tayyaba had a pregnancy pregnant of four months, and the accused Sanaullah pointed his pistol at the complainant's party, and they left the house. The complainant party went to the outer door and saw that one Cultus Car without a number plate was standing in the street while another Car was a Honda Civic white colour without a number plate. The accused boarded the sister of complainant Mst. Saba and his wife in a Honda Civic Car; however, the other accused boarded in another Car. The complainant moved such applications to high-ups but of no avail; hence, he, having no other alternate remedy, filed Misc. Crl. Application and, after obtaining an order from the Court, lodged FIR against accused persons.

3. Learned Counsel for the applicant contends that the applicant has falsely been involved in this case by the complainant with mala-fide intention and ulterior motives due to previous enmity; that there is a delay of about two months in the lodgment of the FIR for which no plausible explanation has been furnished by the complainant; that alleged abductee Mst. Tayyaba Zaheer appeared before Civil Judge & Judicial Magistrate-II, Sukkur on 22.09.2023, who recorded her statement u/s 164 Cr.P.C, whereby she categorically stated that no one abducted her and Mst. Saba and her husband have lodged a false FIR of their abduction against her brothers and others; however, she and Mst. Saba has left the house of the complainant with their own will and wish due to the behavior of the complainant and his family members; hence, it is yet to be determined at the time of trial as to whether the applicant/accused had committed the alleged offence or otherwise; that there is two conflicting views of alleged abductees as such no incident has happened and the applicant/accused has been booked in this false case; that no case of alleged abduction has been made out; that case does not come within the ambit of Sub-Section (2) of Section 497 Cr.P.C By contending so, he prayed for confirmation of bail. He relied upon the case of *Adrees Ahmed and others v. Zafar Ali and another* (2010 SCMR 64) and *Talib Hussain v. The State* (2010 SCMR 69).

4. Learned Additional Prosecutor General contends that, no doubt, an active role has been assigned to the applicant but the victim, namely, Mst. Tayyaba appeared before the learned Magistrate on 22.09.2023, and in her statement, she categorically stated that no one abducted her and Mst. Saba and her husband have lodged a false FIR of her abduction against her brothers and others; however, Mst. Saba, in her statement recorded before Police u/s 161 Cr.P.C on 09.06.2023, has implicated the applicant only to the extent of her abduction; hence, there are two conflicting views, and the benefit of such conflicting views will be extended to the applicant. He, therefore, recorded no objection to the confirmation of the bail to the applicant.

5. Heard arguments of learned Counsel for the parties and perused the record meticulously.

6. Admittedly, the alleged incident occurred on 25.03.2023 at 3:00 a.m, while it was reported on 06.05.2023 at 1900 hours, and no plausible explanation for such a delay has been explained in the contents of FIR. This is a case of the alleged kidnapping of two girls, namely, Mst. Tayyaba and Mst. Saba and they, having been recovered, recorded their respective statements before I.O. Mst. Saba, the alleged abductee, in her statement recorded before police on 09.06.2023, implicated accused persons to the extent of alleged abduction while Mst. Tayyaba did not support such a version in her statement recorded before the Magistrate on 22.09.2023, wherein she categorically stated that no one had abducted her and Mst. Saba. However, her husband has lodged a false FIR of the abduction against her brothers and others; she further recorded that about three months back, Mst. Saba was returned to Sukkur along with the complainant, and she stated before the police due to the pressure of her brother/complainant, she has implicated the present applicant accused. The statement of Mst Tayyaba makes the case of prosecution highly doubtful and one of further enquiry.

7. A first glance at the available material would be necessary in order to determine whether the case was filed with malicious intent and ulterior motives. There is no apparent first evidence linking the applicant to the alleged offence. Indeed, it is yet to be determined at the time of trial after recording evidence whether the applicant is involved in the

commission of the offence or not; hence, on merits, the applicant has, prima facie, a case for confirmation of bail. Reliance can be placed in the case of MUHAMMAD UMAR WAQAS BARKAT ALI Versus The STATE and another (2023 S C M R 330).

**“5. ...., It has been held by this Court in various judgments that merits of the case can be touched upon while adjudicating extraordinary relief of pre-arrest bail. Reliance is placed on Miran Bux v. The State (PLD 1989 SC 347), Sajid Hussain alias Joji v. The State (PLD 2021 SC 898), Javed Iqbal v. The State (2022 SCMR 1424) and Muhammad Ijaz v. The State (2022 SCMR 1271). In these circumstances, it is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner and until then he cannot be put behind the bars for an indefinite period. It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. It is a case of two versions and it is established principle of law that where there is a case of two versions narrated before the Court, it squarely falls within the ambit of section 497(2), Cr.P.C.”**

8. I am of the considered view and backed by the celebrated judgment of the Supreme Court of Pakistan in the case of Meeran Bux v. The State (PLD 1989 SC 347) rendered by a five-member bench, held that while granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon. Keeping in view the facts and circumstances of the present case, the possibility of mala-fide and ulterior motives cannot be ruled out. Needless to reiterate, the liberty of a person is a precious right which has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973, and the same cannot be taken away on bald allegations. Further reliance is made on the case of ADREES AHMAD V/S ZAFAR ALI and another, 2010 SCMR 64.

**“7.....Now adverting to the question as to whether a prima facie case is made out or otherwise, it is to be noted that no evidence qua sodomy has come on record and further no arm injury whatsoever was found on the body of complainant except fracture of his finger which according to medical report was fabricated and the fracture was described as "self-suffered". It must not be lost sight of that initially the case was got registered under sections 148, 149 and 342, P.P.C. and subsequently the addition of section 365, P.P.C. was**

**made which depicts the mala fide and ulterior motives. It is worth mentioning that litigation is pending between the parties on the watercourse which indicates the factum of enmity. As mentioned hereinabove, nothing could be produced on record showing that the concession of pre-arrest bail has been misused and the petitioners remained absconders"**

9. Per section 498 of the Criminal Procedure Code, the High Court possesses the authority to issue an order granting bail to an individual who is under suspicion of committing an offence for which a Police Officer or a court may apprehend them. The exercise of this authority, however, should be limited to the situations where there is not only a strong initial basis for granting bail for the alleged offence but also where it can be demonstrated that if the applicant accused is to be arrested, he shall be subject to the maltreatment at the highhandedness of the police. In the present matter, it is evident that the complainant has displayed malicious intent by involving a significant number of other persons due to their relationship with the accused. In the light of the above discussion and material made available on record, the basic ingredients for the grant of pre-arrest bail as laid down by the Hon'ble Supreme Court of Pakistan in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 Supreme Court 427) are fully attracted which entitles the applicant Sabir Ali with concession of extraordinary relief. Consequently, the interim pre-arrest bail granted to the applicant /accused on 26.06.2023 is hereby confirmed on the same terms and conditions.

10. The applicant is regularly attending this Court as well as the learned trial Court, and there is no allegation of misusing or abusing the concession of bail against him; therefore, no useful purpose would be met in diverting the applicant back to the learned trial Court for seeking his post-arrest bail.

11. Needless to mention here that observations made herein above are tentative in nature, and the trial Court may not be influenced by the same and decide the case on its own merits as per evidence and the material made available before it.

Bail application stands disposed of in the above terms.

**J U D G E**

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