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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Crl. B.A No.D- 49 of 2014

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:
Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Naimatullah Phulpoto

19.6.2014

Mr. Shahbaz Ali Brohi, advocate for applicants.
Mr. Imtiaz Ali Jalbani, APG.

Naimatullah Phulpoto, J.- Applicants/accused Abdul Ghani and Nadir seek pre-arrest bail in crime No.14/2014 registered at Police Station Stuart Ganj, Shikarpur under sections 365-A, 148, 149, PPC and under Section 6/7, Anti Terrorism Act, 1997. Previous bail before arrest application was moved before the trial Court, the same was rejected vide orders dated 04.6.2014.

2. Brief facts of the prosecution case as disclosed in the F.I.R are that on 15.2.2014 SHO PS Stuart Ganj, Shikarpur lodged his report against the accused alleging therein that he received spy information that abductee Vicky Kumar has been kidnapped for ransom by applicants/accused and others.

3. Learned APG present in Court waives notice and stated that during investigation police conducted raid on 15.2.2014 and after encounter Vicky Kumar was recovered from the paddy straws. Accused Sameeullah and others were arrested. Present accused were shown as absconders in the challan sheet.

4. Mr. Shahbaz Ali Brohi, learned counsel for the applicants/accused mainly contended that abductee Vicky Kumar has filed an affidavit in which applicants/ accused have been exonerated. It is further submitted that case against applicants/ accused requires further enquiry.

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5. Mr. Jalbani learned APG argued that abductee was recovered in police encounter. All the prosecution witnesses including abductee Vicky Kumar have fully implicated the applicants/accused in the commission of the offence in their 161, Cr.P.C statements. It is further argued that mere filing of the affidavit of abductee is not sufficient for grant of pre-arrest bail. Learned APG submitted that yet genuineness of the affidavit is to be ascertained by the trial Court. Lastly, he has argued that filing of affidavit is an attempt to temper with the prosecution evidence. He has strongly opposed the application.

6. In our considered view, no case for grant of pre-arrest bail to the applicants/accused is made out for the reasons that ingredients for grant of pre-arrest bail especially mala fides in view of the dicta laid down by Hon'ble Supreme Court in the case of *Rana Muhammad Arshad v. Muhammad Rafiq & another*, PLD 2009 SC 427, are missing in this case. Names of applicants/accused transpire in F.I.R. Abductee Vicky Kumar has implicated the applicants/accused in his 161, Cr.P.C statement. Applicants/accused have been named in the F.I.R. Affidavit of PW Vicky Kumar at bail stage cannot be regarded as evidence and cannot be acted upon unless trial Court is satisfied that it is true and reliable. Court has to be very careful by deciding the bail application on the basis of affidavits. Entire material collected during investigation is to be assessed tentatively. Learned APG has argued that affidavit of PW Vicky Kumar has been obtained by force. This aspect is yet to be considered by the trial Court. The alleged offence carries capital punishment. Prima facie, there are reasonable grounds for believing that applicants/accused have committed alleged offence. Therefore, bail before arrest application is without merit. Hence, it is dismissed.