

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No.S-398 of 2024

**Ali Hassan Sargani & another
Vs
The State**

Applicants : Through Mr. Himat Ali Baladi, Advocate.

Complainant : Wazeer Hussain Sargani, through Mr. Muhammad Afzal Jagirani holding brief for Mr. Mazhar Ali Bhutto, Advocate.

State : Through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing : 16.10.2024.
Date of Decision : 16.10.2024.

ORDER.

Arbab Ali Hakro, J.- Applicants Ali Hassan son of Gul Hassan *alias* Bago and Gul Hassan *alias* Bago son of Ali Hassan, both by caste Sargani, seek post-arrest bail in Crime No.21/2024, registered at Police Station Allahabad, Larkana, under Sections 365-B, 452, 34, PPC. The bail plea preferred by them was declined by means of order dated 22.06.2024 passed by the learned Additional Sessions Judge-IV, Larkana.

2. According to the case of prosecution, on 10.02.2024, at about 11.00 a.m., the present applicants, along with co-accused Shahid Hussain and an unidentified accomplice, being armed with pistols, abducted Mst. Shaista Parveen, niece of complainant Wazeer Hussain Sargani, from his house situated at Daya Chowk of Allahabad Mohalla, Larkana town, with the intention of committing forcible zina with her; hence, the complainant lodged such FIR at PS Allahabad, on 13.02.2024, at 11.00 p.m.

3. Learned Counsel for the applicants submits that there is a delay of 03 days in lodging the FIR, for which no plausible explanation has been furnished by the complainant; that no such incident has occurred and the alleged abductee, Mst. Shaista Parveen had, in fact, left the complainant's house and entered into Nikah with applicant Ali Hassan according to her own free will. Therefore, she and her spouse maintained C. P. No.D-1167/2024 before the

Principal Seat of this Court at Karachi, which was disposed of on 26.04.2024. He further contends that the statement u/s 164, Cr.P.C of alleged abductee Mst. Shaista Parveen has been obtained from her under coercion by exerting illegal pressure upon her. He, therefore, contends that the case against the applicants requires further enquiry.

4. Learned Addl. P.G, appearing for the State, opposed the bail application, contending that the applicants are nominated not only in the FIR but the alleged abductee Mst. Shaista Parveen has also implicated them in her 164, Cr.P.C statement; therefore, they are not entitled for concession of bail.

5. Mr. Muhammad Afzal Jagirani, holding brief on behalf of Mr. Mazhar Ali Bhutto, learned Counsel for the complainant, also opposes the bail application on the grounds that the applicants, who are named in the FIR and also implicated by the alleged abductee in her 164, Cr.P.C statement, are involved in a heinous offence of abducting a young girl with the obnoxious intent of committing zina with her; that the offence is against the society; that the PWs in their 161 Cr.P.C. statements have also implicated the applicants in the commission of alleged offence; and, lastly submits that the case is fixed at the stage of evidence before the trial Court.

6. Heard learned Counsel for the parties and perused the record.

7. The perusal of the record reflects that the complainant lodged an FIR on 13.02.2024 against the applicants, but on 04.3.2024, the alleged abductee, Mst. Shaista Parveen and applicant No.1 Ali Hassan jointly filed Const. Petition No.D-1167/2024 before the Principal Seat of this Court at Karachi. In the said petition, the alleged abductee clearly stated that she is a major and *sui juris* lady and has contracted marriage with applicant No.1 Ali Hassan of her own accord and denied the allegation of forced marriage or abduction. The learned Counsel for the applicants has placed on record such documents, including the abductee's affidavit and the Nikahnama supporting the claim of a valid marriage between the applicant No.1 and the alleged abductee. It is worth mentioning that Section 365-B, PPC, signifies the carrying away or abducting of a woman to compel her for marriage or be forced or seduced into illicit intercourse against her will. The plain reading of the section indicates two components and ingredients of the offence: firstly, there must be a kidnapping or abduction of a woman, and secondly, to force or seduce her into illicit intercourse. The first act of her kidnapping or abduction must be with the intent that she may be compelled to marry or be forced or seduced into illicit intercourse. In this case,

as mentioned, prima facie, the abductee has given two versions: firstly, when appeared with her husband in C. P. No.D-1167/2024 and secondly she resided with parents and recorded statement u/s 164, Cr.P.C after lapse of about 3 months. This discrepancy makes the case of the applicants one of further enquiry. In this respect, reliance can be placed on the case reported as **Zaigham Ashraf vs. State, etc. (PLJ 2016 SC 14)**, wherein the Hon'ble Supreme Court has held as under:-

"Keeping in view the two conflicting versions; one given by the complainant in the FIR and the other by the Investigating Agency based on documentary evidence with regard to the plea of alibi, the case of the present petitioner has become certainly one of further inquiry, falling within the ambit of sub-section (2) of Section 497, Cr.P.C., where grant of bail becomes the right of accused and it is not a grace or concession, to be given by the Court. In the absence of any exceptional ground or reason, denial of bail in such a case would amount to exercise a discretion in a manner, not warranted by law and principle of justice."

8. Reliance can also be placed upon the pronouncement of Hon'ble Supreme Court in the case reported as **Ehsan Ullah vs. The State (2012 SCMR 1137)**, wherein it was held that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as of right and not by way of grace or concession.

9. It is a settled principle of law that the mere heinousness of an offence is not sufficient to refuse concession of post-arrest bail, but the requirement of the law is to show reasonable grounds to believe the linking of the accused with such an offence. The case has already been challaned, and the applicants/ accused are no longer required for the purpose of the investigation.

10. Keeping in view of the above facts and circumstances, prima facie, the applicants have succeeded in bringing their case within the purview of sub-section (2) to Section 497, Cr.P.C, for which reason the applicants are admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- (rupees one lac) each and P.R. Bonds in the like amount to the satisfaction of trial Court.

11. The observations are tentative in nature, which shall not affect the case of either party at trial.

JUDGE