

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Bail Application No. S-709 of 2019

Applicant : Abdul Waheed s/o. Abdul Nabi Mastoi,
through Mr. Zahid Hussain Chandio, Advocate

Respondent : The State, through Mr. Ali Anwar Kandhro, APG

Complainant : Ali Murad s/o. Mumtaz Ali Kalhoro, Nemo

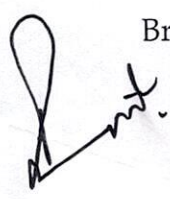
Dates of hearing : -----
: 13.01.2020

Date of order : 13.01.2020
: -----

ORDER

ZAFAR AHMED RAJPUT, J:- Having rejected his earlier pre-arrest bail application bearing No. 1298 of 2019 by the learned IInd Additional Sessions Judge, Larkana vide order dated 01.10.2019, applicant/accused Abdul Waheed s/o. Abdul Nabi Mastoi through instant criminal bail application seeks pre-arrest bail in Crime No. 91 of 2019, registered at P.S Rehmatpur, District Larkana, under Section 365-B, 452 & 34, P.P.C. He was granted interim pre-arrest bail by this Court vide order dated 17.12.2019, now he seeks confirmation of his bail.

2. Briefly stated, the facts of the prosecution case are that on 22.09.2019 complainant Ali Murad Kalhoro lodged the aforementioned F.I.R. alleging therein that on 13.09.2019, at about 1000 hours, the applicant/accused along with co-accused Ashfaq Ali and Sajjad Ali, duly armed with pistols, in furtherance of their common intention, committed trespass into his house, and then applicant got his (complainant's) sister Mst. Fahmeeda alias Faiza, aged about 13/14 years, seated forcibly in a car driven by co-accused Ashfaq Brohi and thereafter they went away.



3. The learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that the complainant had maltreated his sister on some personal matter, who then left the house due to fear and resided with her brother-in-law and latter she returned to her house and such video clip of Mst. Fahmeeda is also available; however, the I.O failed to record her statement; that since police has submitted the Challan, his personal custody is not required by police for further investigation; that the applicant is a respectable person and in case he is arrested, he would be humiliated by the police.

4. On the other hand, learned APG has opposed this application on the ground that the applicant has been nominated in the F.I.R. with specific role and neither alleged abductee has been recovered nor the co-accused have been arrested; that all the prosecution witnesses in their statements recorded under section 161 Cr. P.C. have fully implicated the applicant; as such, from the tentative assessment of the evidence available with the prosecution the applicant is prima-facie involved in the commission of alleged offence; that the complainant has no motive to implicate the accused falsely in alleged offence; that pre-arrest bail is an extra-ordinary relief which is to be granted in extraordinary situation, where prosecution is motivated by any consideration or mala fide; therefore, the accused is not entitled to concession of pre-arrest bail.

5. Heard the learned counsel for the applicant/accused as well as learned APG for the State and perused the material available on record.

6. It appears from the perusal of record that the alleged abductee has yet not been recovered; besides, the co-accused are still absconders as they have neither surrendered before the trial Court nor they have been arrested. The alleged 'offence is punishable with imprisonment for life. The prosecution

witnesses have fully supported the averment of F.I.R. in their statemnt recorded under section 161 Cr.P.C. There appears no reason for false implication of the applicant in the case. The counsel for accused has not been able to point out any special feature of the case entitling accused to grant of extra-ordinary concession of pre-arrest bail. Pre-requisites for such concession i.e. malice and ulterior motive, either on the part of complainant or the police are conspicuously missing in the case.

7. So far the defense version, as argued by the learned counsel for the accused is concerned, suffice to say that the Court under sub-section (2) of the Section 497 Cr. P.C. is not to make probe into defense version in order to advance a plea of bail, rather it has to assess tentatively the material produced before it and to see if reasonable ground exists to believe, *prima facie* involvement of accused in the commission of offence and if the accused found connected with the commission of offence, he will not be released on bail on the basis of further inquiry. Reliance in this regard may be placed in the case of Khalida Bibi v. Nadeem Baig (PLD 2009 S.C. 440). Accordingly, this bail application is dismissed. The interim bail granted to accused, vide order dated 17.12.2019, stands recalled.

8. 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.


JUDGE