

Form No: HCJD/C-121.  
ORDER SHEET.  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT.

**Criminal Misc. No. 1474-B of 2022**

Nawazish Jalil  
Versus  
The State & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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05.12.2022. Raja Muhammad Shafat Khan, Advocate for the petitioner.  
Malik Abdur Rehman, State Counsel.  
Sardar Tariq Hussain, Advocate for the complainant.  
Mr. Muhammad Ashraf, Inspector.  
Mr. Asif, S.I, P.S Koral Islamabad.

The petitioner Nawazish Jalil son of Muhammad Jalil has sought bail after arrest in relation to charges brought against him under Sections 365-B, 109, 34, 420, 468, 471 of Pakistan Penal Code, 1860 ("**PPC**") pursuant to F.I.R 1473, dated 07.08.2022, at Police Station Koral, Islamabad.

2. The learned counsel for the petitioner submitted that the complainant's daughter had voluntarily married the petitioner and was not abducted or otherwise coerced, and she had stated the same in a video statement recorded. Therefore, the offence under Section 365-B of PPC was not made out. He submitted that the age as reflected on the *Nikkahnama* was that stated by the

complainant daughter herself, according to which she was 19 years of age at the time that the *Nikkah* was solemnized. And to the extent that the age was incorrect no offence under Section 468 of PPC was made out. He stated that the other charges brought under Sections 420 and 471 were also bailable. A *Nikkahnama* was signed by between the petitioner and the complainant's daughter on 07.08.2022 and was duly witnessed by the witnesses whose names were reflected on the *Nikkahnama*. He stated that the petitioner was not required for any further inquiry and keeping him behind the bars was not in the interest of justice.

3. The learned counsel for the complainant stated that the age of the complainant's daughter as reflected on the *Nikkahnama* was 23.03.2003 even though her actual age as reflected in NADRA record was 23.03.2008, and she was 14 years and 6 months old at the time of the purported *Nikkah*. She had subsequently recorded her statement under Section 164 of Cr.P.C, which statement was made while she was at Dar-ul-Aman according to which she did not

voluntarily enter into *Nikkah* with the petitioner.

4. The learned State Counsel stated that the petitioner had purportedly entered into *Nikkah* with an under-age girl against her wishes and was liable for an offence under Section 365-B of PPC. He further stated that even the *Nikkahnama* appended to the petition was not the same as the one in the police record. The *Nikkahnama* appended to the petition was a forged document substantiating the charges of forgery against the petitioner under Section 468 of PPC.

5. The complainant's daughter was recovered by police authorities pursuant to directions issued by this Court in another petition. The age of the complainant's daughter and whether she was forcefully abducted by the petitioner himself or with the help of companions is a matter of further inquiry, which would need to be determined by the learned trial Court in view of the evidence adduce during the trial. Likewise, whether or not the *Nikkahnama* being relied by the petitioner is a forged document is also the matter of further inquiry to be determined in view of the evidence adduce before the

learned trial Court and the testimony of witnesses to the *Nikkah*. The petitioner is not required for investigation by the police and has been placed in judicial custody. Keeping him incarcerated pending trial would amount to pre-trial punishment, which cannot be countenanced in view of the law settled by the august Supreme Court whereby pre-trial punishment has been declared unconstitutional.

6. For the aforementioned reasons, this Court finds that the petitioner has successfully made out a case of one of further inquiry within the meaning of Section 497(2) of Cr.P.C. Therefore, the petition is **allowed**. The petitioner is admitted to bail subject to condition that upon being released on bail he shall not reach out to the complainant's daughter or contact her in any way and subject to furnishing bail bonds in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one local surety in like amount to the satisfaction of the learned trial Court. The petitioner shall be at liberty to deposit cash surety in accordance with the policy of this Court. Any effort by the petitioner to contact the complainant's daughter would be a ground for

immediate cancellation of bail. The concession of bail may be cancelled by the competent Court under Section 497(5) Cr.P.C, if the petitioner misuses it in any manner, including causing delay in the expeditious conclusion of the trial.

7. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

**(BABAR SATTAR)**  
**JUDGE**

Shakeel Afzal