

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 677/B/2019.

Mst. Samina Bibi

Versus

The State, etc.

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|------------------------------|----------------------------|--|
| | 04.11.2019. | Mian Asad Hayat Awan, Advocate for petitioner. Mr. Fareed Hussain Kaif, State Counsel. Rana Shahid Hussain Khan, Advocate for respondent No.2. Akram, ASI, P.S. Ramna, Islamabad. |

Through this Crl. Misc. petition, the petitioner has applied for post-arrest bail in case FIR No.281, dated 28.08.2019, U/S 364-A/34 PPC, P.S. Ramna, Islamabad.

2. Brief facts referred in the instant FIR registered on the complaint of Ramzan/respondent No.2 are that his daughter namely Aqsa Bibi, aged about 12 years was abducted by Ali Abbas his brothers Ahmed Ali, Hassan Ali and Mst. Samina Bibi (present petitioner) on 28.08.2019 at about 04:00 a.m. in the morning, whereas cash amount Rs.50,000/- and one tola gold was also removed.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case and as such she has no relevance with the matter; that from the bare reading of FIR it reveals that allegation against present petitioner is that she called the complainant/father of alleged abductee and told him that she will kidnap the minor; that investigation

has been completed to the extent of petitioner whereas other co-accused are not arrested, nor alleged abductee has been recovered.

4. Conversely, learned counsel for the complainant as well as State Counsel contends that petitioner is directly nominated in this case with specific role of helping out the co-accused to abduct the minor Aqsa and as such minor has not been recovered till date, even principal accused has not been arrested despite the lapse of two months period.

5. Arguments heard, record perused.

6. From the cursory glimpse of record, it reveals that above mentioned FIR has been registered on the complaint of respondent No.2 with the allegation that her daughter Aqsa Bibi, aged about 12 years was abducted by Ali Abbas, Ahmed Ali, Hassan Ali all three brothers with the help of Samina Bibi (present petitioner) on 28.08.2019 at about 04:00 a.m. in the morning.

7. As per the contents of FIR, present petitioner has been alleged specific role that she called the complainant/father of alleged abductee on his mobile phone and extended threats that she alongwith others will kidnap the minor. The petitioner was arrested on 29.08.2019, the very next day of the alleged incident but no clue or any evidence has been collected by the I.O to justify the relationship of the present petitioner with the co-accused, although the alleged abductee has not yet

been recovered till date, nor co-accused have been arrested.

8. Investigation has been completed to the extent of present petitioner and the I.O has been confronted to justify the role of present petitioner whereas it has been stated by the complainant's side as well as by the State that Samina Bibi has only made a call to complainant on his mobile number 0341-3565840 and extended the threat to abduct Aqsa on 27.08.2019 prior to the alleged occurrence, no other incriminating material is available on record, nor I.O is able to justify through any other evidence that petitioner has abducted the Aqsa, even there is no other evidence in this regard. The petitioner is a woman and is behind the bars since 29.08.2019 and as such she is facing incarceration for the last two months and no useful purpose would be achieved by keeping the petitioner behind the bars.

9. *Prima-facie*, at this stage, no incriminating evidence is available against the petitioner to connect her with the crime of abduction, which itself is ground of further inquiry U/S 497(2) Cr.P.C. especially when there is no direct evidence that petitioner herself abducted the minor.

10. Besides the above background, it has been reflected from record that principal accused namely Ali Abbas was interested to marry with the alleged abductee, which otherwise, spells out the ground of further inquiry in favour of present petitioner. The

sentence provided in terms of Section 364-A PPC is death or imprisonment for life which is capital sentence and as such offence falls within the prohibitory clause of Section 497 Cr.P.C., however, it is trite law that offence U/S 364-A PPC has to apply in those cases in which it has been established that minor was taken or enticed away by the kidnaper from the lawful guardian without his or her consent. Moreover, the Court has to see whether the accused intended to murder the victim or subjected her to grievous hurt or lust. In the instant matter positive steps for enticement are not referred to the petitioner rather the prosecution point out the role of Ali Abbas as the principal accused.

11. Keeping in view the above background, instant petition is allowed, subject to furnishing of bail bonds in sum of Rs.1,00,000/- (Rupees One Lac only) with one surety in the like amount to the satisfaction of learned trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid