

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 216-B of 2020.

Hamza Afsar.

VERSUS

The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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02. 01.04.2020. Qazi Ghulam Dastgir and Malik Nasir Abbas
Awan, Advocates for the petitioner.
Mr M. Atif Khokhar, State Counsel.
Mr Akhtar, SI with record.

The petitioner Hamza Afsar son of Manzoor Hussain has sought post-arrest bail in case, FIR No. 123, dated 09.03.2020, registered under section 365-B/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Industrial Area, Islamabad.

2. Brief facts as alleged in the FIR are that on 06.03.2020, one Zain-ul-Abideen and his sister namely, Fiaza had abducted the complainant's daughter . Hence, the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is not nominated in the FIR; the petitioner has been involved in the instant case after recording of supplementary statement; the petitioner has been involved in the instant case just to harass and pressurize him; there is delay of three days in registration of the instant

case; allegations against the petitioner are false, frivolous and vexatious; the petitioner has not committed the alleged offence; the petitioner has no concern whatsoever with the commission of alleged offence; despite being on physical remand no incriminating material was recovered from the petitioner; the petitioner is innocent; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; offence does not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner has no criminal record; the petitioner has been incarcerated for the last twenty days; offence is not attracted against the petitioner; the case against the petitioner is that of further probe; report under section 173 of Cr.P.C. has not been submitted before the learned trial Court as yet; there is no chance of the petitioner to abscond or tamper with the prosecution evidence; hence prayed for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Akhtar, SI. They have opposed the grant of bail. It was argued that; the petitioner has a specific role in the commission of the alleged offence; the petitioner has been involved in the instant case after recording of supplementary statement; FIR was lodged promptly; the complainant was searching for her daughter; the petitioner is involved in the abduction; the petitioner has committed a heinous offence; hence prayed for dismissal of instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record shows that the petitioner was not nominated in FIR and later he was involved in the instant case after recording of supplementary statement of the complainant belatedly. The alleged occurrence has taken place on 06.03.2020, whereas the instant FIR was registered on 09.03.2020 i.e. after a delay of three days. The petitioner remained on physical remand but no incriminating material was recovered during this period. The petitioner has been incarcerated for the last about twenty days. His continued incarceration will not serve any useful purpose at this stage. Despite repeatedly asking the Investigating Officer to show any incriminating material to the extent of the petitioner, he failed to do so. The belated supplementary statement is also on the basis of mere apprehensions. Whether or not section 365-B of PPC is attracted in this case needs further probe. Report under section 173 of Cr.P.C. has not been submitted before the learned trial Court as yet. Investigation qua the petitioner has been completed and he is no more required for the purposes thereof. In the circumstances, the role of the petitioner and his involvement in the instant case definitely needs further probe. Likewise whether the offence mentioned in the FIR is attracted to the extent of the present petitioner also requires probe.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation

can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run”.

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is ***allowed*** and the petitioner is ***admitted*** to bail, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

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

(CHIEF JUSTICE)

*Asad K/**