

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

Crl. Misc. No.785/B/2019

Omer Hayat

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)	30.12.2019	Raja Shahzad Javed, Advocate for the petitioner. Barrister Ayesha Siddique Khan, State Counsel. Complainant in person. Mian Khan, S.I.

MOHSIN AKHTAR KAYANI J. Through instant petition, the petitioner has prayed for his post arrest bail in case FIR No. 452/19, dated 24.09.2019, U/S 496-A PPC, P.S Bara Kahu, Islamabad.

2. Brief facts referred in the instant F.I.R lodged on the complaint of Muhammad Asif/respondent No.2 are that he is serving in Pakistan Army and on 24.09.2019, he received a call that his wife Mst. Abida Bibi alongwith two minor children are missing from his house, complainant's brother also verified the missing Mst. Abida Bibi from her parents house, but she was not with her parents, thereafter Shakeel, resident of Ahmad Pur Sial, Tehsil Jhang and his relative Wajid were nominated in this case.

3. Learned counsel for the petitioner contends that petitioner is not nominated as accused in this case nor any role has been attributed regarding enticement and abduction of Mst. Abida Bibi. He further contends that Mst. Abida Bibi has filed application before the

learned Judicial Magistrate, Section 30, Ahmad Pur Sial on 03.10.2019 and recorded her statement, whereafter she was sent to *Darulaman* to provide her security. He further contends that the alleged abductee has filed suit for dissolution of marriage against Muhammad Asif/complainant on 08.09.2019 before learned Judge Family Court, Ahmad Pur Sial prior to the alleged date of occurrence and as such it is a case of further inquiry and any subsequent statement U/s 164 Cr.P.C recorded at Islamabad has no legal worth to consider the same against the present petitioner. It has lastly been contended that the challan has been submitted before the Court and petitioner is no more required for the purpose of investigation, hence entitled for concession of post arrest bail.

4. Conversely, Complainant in person stated before the Court that his counsel is not available and requests for adjournment, which has been turned down as it is the 4th date of hearing of instant post arrest bail, therefore, learned State Counsel is directed to argue the case.

5. Learned State Counsel contends that although the petitioner is not directly nominated in this case, but when the alleged abductee was recovered and came to Islamabad and recorded her statement U/s 164 Cr.P.C. on 29.10.2019, she has ascribed the complete role of petitioner, in which she alleges that petitioner abducted her in connivance with the other co-accused persons, who have been granted post arrest bail in this case. It has lastly been contended

that the alleged abductee has recorded her statement U/s 164 Cr.P.C and such statement could not be considered on the lighter side at the bail stage, which prima face connects the petitioner with the alleged crime of enticement and abduction.

6. Arguments heard, record perused.

7. Perusal of record reveals that the lady namely Abida Bibi was allegedly enticed away by the nominated accused namely Shakeel and Wajid referred in FIR No. 452/19, dated 24.09.2019, U/S 496-A PPC, P.S Bara Kahu, Islamabad lodged on the complaint of Muhammad Asif/Complainant, the husband of Abida Bibi.

8. The tentative assessment of record reflects that the alleged abductee was missing from his abode on 24.09.2019. She has filed suit for dissolution of marriage **titled Mst. Abida Bibi Vs. Muhammad Asif** on 28.09.2019 before learned Family Judge, Ahmed Pur Sial and same is pending adjudication and in addition to the said suit, the application was also filed by the said abductee on 03.10.2019 before the Illaqa Magistrate, Ahmed Pur Sial, District Jhang, in which she has referred the conduct of complainant/her husband Muhammad Asif, the said application was allowed by the concerned Magistrate, who recorded the statement of alleged abductee on 03.10.2019 and sent her to *Darulaman* alongwith two minors for protection of life from her husband i.e. Complainant. When the alleged abductee was brought to Islamabad, she again recorded her statement U/s 164 Cr.P.C. on 29.10.2019 and ascribed the role of Shakeel,

Shaukat, Wajid and Umer Hayat/preset petitioner, who have allegedly abducted her on gunpoint.

9. The above referred position clearly shows that two contradictory stances have been recorded by the alleged abductee before two different Magistrates, which are available on record, whereby in the earlier statement, she has not uttered a single word regarding her abduction rather she was seeking protection from her husband and in the second statement, she has taken a somersault and alleged the commission of offence against the petitioner as well as to others

10. Besides the above referred position, the co-accused nominated through supplementary statement in this case namely Shaukat Ali, Muhammad Tanveer have been granted post arrest bail by the concerned Illaqa Magistrate and as such rule of consistency is applicable in this case. The Challan has been submitted before the Court on 16.11.2019, however, charge has not yet been framed. The element of enticement is not visible and even the suit for dissolution of marriage reflects the conduct of complainant, whereby all these factors establish the case as of further inquiry in terms of Section 497(2) Cr.P.C, even otherwise, the effect of two different statements of alleged abductee recorded before different Courts have to be evaluated at the time of trial in evidence, therefore, petitioner is entitled for concession of post arrest bail, who is presently behind the bars with no useful purpose.

11. For what has been discussed above, the instant petition is **allowed** and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN