

ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl.Misc.No.806-B/2019

Ali Haider
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.
	31.12.2019.	Ch.M.Abdul Latif Gujjar & Mr.Ali Hussain Bhatti, Advocates for Petitioner. Barrister Ayesha Siddique Khan, State Counsel. Mr.Khalid Inspector, Mr.Mumtaz S.I and Safdar Hussain, ASI.

Through this Criminal Miscellaneous application, the
Petitioner has prayed for his post arrest bail in Case FIR No.435
dated 03.09.2019 under Section 365-B PPC registered at Police
Station Golra Sharif, Islamabad.

2. The brief facts as referred in this case registered on the
complaint of respondent No.2/Amna Bibi are that her daughter
namely Nadia aged about 17/18 years had gone to her daily routine
work on 02.09.2019 and when she did not come back, she received
a telephone call from two unknown numbers, who extended life
threats and it has been alleged that her daughter has been
kidnapped for the purpose of committing Zina.

3. Learned counsel for the petitioner contends that petitioner
is innocent and has falsely been implicated in this case; that as per
medical evidence no mark of violence has been observed by the
doctor on the body of the alleged abductee and even no rape has
been committed with the alleged abductee; that sixteen (16) cases
of different nature have been registered against the family of
complainant which shows their state of mind to involve the
petitioner without any basis; that the doctor has neither taken into
possession the last worn clothes of the victim nor there is any
chemical examiner report, through which it could be verified that
rape has been committed with the alleged abductee; that DNA test

report has been received which is negative; that statement u/s 164 Cr.P.C recorded by the Judicial Magistrate has to be appreciated at the time of trial as such there is no corroborative evidence to link the petitioner with the crime.

4. Conversely learned State Counsel contends that petitioner has been nominated in the instant case with specific role of commission of Zina with the alleged abductee and as such the petitioner is not entitled for concession of bail.

5. Arguments heard. Record perused.

6. Perusal of record reveals that petitioner has been nominated as accused in case FIR No.435 dated 03.09.2019 under section 365-B PPC PS Golra Sharif, Islamabad and petitioner has been involved in this case through supplementary statement of alleged abductee Nadia Bibi who has been allegedly abducted and raped by the petitioner and other co-accused persons. The tentative assessment of the record reveals that respondent No.2/complainant lodged the FIR with the allegation that her daughter Nadia Bibi aged about 17/18 years was got missing on 02.09.2019, when she went to her daily routine work. The alleged abductee was recovered on 06.09.2019, who reached at Police Station and recorded her statement in which she did not nominate any individual except four unknown persons, who have allegedly committed Zina with her.

7. This is the second post arrest bail application of the petitioner as earlier post arrest bail application was dismissed by this Court on merit vide order dated 21.10.2019. Although the new ground raised by the petitioner is the negative result of DNA which was not available at the time of filing of previous post arrest bail application of the petitioner. There is no denial on record that DNA

test report is negative and as such at this stage it is difficult to ascertain as per the said report that petitioner is involved in the heinous crime of abduction and he has committed rape with the alleged victim or not. However, the conduct of the I.O as well as doctor was recorded by this Court in the previous order which reproduced hereunder for reference.

The statement of alleged abductee reveals the role of the present petitioner as well as others, even she has stated in categorical terms that the I.O took her to the market and got new clothes for her, which were changed in the car of the police inspector and stained clothes were removed. This Court called SP Investigation as well as concerned doctor alongwith I.O, which further substantiate that Iqbal Gujjar, S.I has not investigated the matter in proper manner, even he retained the alleged abductee with some lady for two days, thereafter the alleged abductee has been produced in Police Station and later on in the hospital for medical, even the doctor Nasreen Butt did not take notice of clothes of the alleged abductee neither she asked about the clothes for the purpose of evidence and as such the I.O and one of the alleged S.I have misused their authority, which is apparent on record.

8. The above referred position available on record clearly reflects the inefficiency on the part of Iqbal Gujjar, S.I as well as Dr.Nasreen Butt due to which DNA sampling was not taken at the earliest stage.. Even the clothes which were worn by the victim at the time of occurrence were not available. Even otherwise DNA report is a corroborative piece of evidence which could not replace direct evidence and in these peculiar circumstances referred above, any benefit to the petitioner cannot be granted, especially when the statement u/s 164

Cr.P.C recorded by the petitioner before the Magistrate clearly spells out the abduction and gang rape by the petitioner and his co-accused. In such circumstances, tentative assessment of record prima facie connects the petitioner with the crime which otherwise falls within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, instant post arrest bail application is not made out on merit and same is hereby dismissed.

9. The learned trial Court is directed to conclude the trial of this case within a period of six months and SP Investigation shall ensure the completion of investigation qua the other co-accused.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI