

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

**Crl. Misc. No.786-BC/2020**

**Crl. Misc. No.787-BC/2020**

*and*

**Crl. Misc. No.788-BC/2020**

Irfan Haider Khan

*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.
	16.07.2020	<p>Mr. Luqman Zafar Ch. and Mr. Zahid Asif Ch., Advocates for petitioner.</p> <p>Mr. Tanveer Khalid Awan, Advocate for Respondent (Adeel) in Crl. Misc. No.786-BC/2020.</p> <p>Mr. Muzammil Din Ch., Advocate for Respondent (Muhammad Israr alias Jhana) in Crl. Misc. No.787-BC/2020.</p> <p>Mr. Muhammad Inam Mughal, Advocate for Respondents (Musaddiq and Usama) in Crl. Misc. No.788-BC/2020.</p> <p>Mr. Hasnain Haider Thaheem, State Counsel.</p> <p>Tariq Cheema, S.I. P.S. Golra Sharif, Islamabad.</p> <p>Ghulam Abbas Khan, ASI, P.S. Golra Sharif, Islamabad.</p>

**MOHSIN AKHTAR KAYANI, J:** Through this single order, I intend to decide the captioned criminal miscellaneous applications arising out of same case FIR No.299, dated 03.06.2020, under Sections 364-A/511/34, 337-F(i), 337-J PPC, P.S. Golra Sharif, Islamabad.

2. The petitioner, Irfan Haider Khan, in the captioned criminal miscellaneous applications has prayed for cancellation of post arrest bail granted by learned Additional Sessions Judge to respondents namely Adeel, Muhammad Israr alias Jhana, Musaddiq and Usama, vide order dated 18.06.2020, in the aforesaid case FIR No.299/2020.

3. Learned counsel for petitioner contends that on 02.06.2020, at about 09:15 a.m., the respondents/accused

persons had kidnapped the petitioner's nephew namely Abbas Khan, 13 years, student of 7<sup>th</sup> Class, when he was coming from a nearby grocery shop. The abductee was recovered in unconscious condition from a nearby field, who after gaining consciousness disclosed that he was abducted by Musadiq, armed with pistol, Usama armed with knuckle buster, Adeel with dagger and Muhammad Israr with knife, who came there on two motorcycles and left the abductee in open field after giving him physical assault; that learned duty Additional Sessions Judge has granted post arrest bail to all accused persons/respondents without adhering to the legal principle for grant of post arrest bail in such type of heinous crime of abduction, which falls within the ambit of prohibitory clause of Section 497 Cr.P.C.; that the learned counsel for petitioner Mr. Zahid Asif Ch., Advocate was not available at the time of grant of post arrest bail due to COVID-19 lockdown in his area of residence, whereby a request was also made by his associate, but same was turned down and the bail applications were decided in haste and as such, right of petitioner has been jeopardized; that offence under Sections 337-J and 337F(i) has been incorporated, but the matter was not considered in true perspective; that the previous Investigating Officer has not investigated the matter and facilitated the accused persons, whereafter the investigation was transferred to CIA and it requires a proper adjudication of the post arrest bail applications in the light of recent development of the case.

4. Conversely, learned counsel for respondents have separately argued their cases and contend that there is no illegality or perversity pointed out by the petitioner side nor

anything has been recovered from respondents to connect them with the crime of abduction and as such, order passed by learned Additional Sessions Judge granting post arrest bail to the respondents is in accordance with law.

5. Arguments heard, record perused.

6. Tentative assessment of record reveals that all four respondents have been nominated in case FIR No.299, dated 03.06.2020, under Sections 364-A/511/34, 337-F(i), 337-J PPC, P.S. Golra Sharif, Islamabad with specific role of kidnapping/abduction of petitioner's nephew i.e. Ghulam Abbas on gunpoint and later on he was found in a nearby field having been lying there in unconscious condition due to intoxication given by the respondents for the purpose of abduction. The respondents were granted post arrest bail by the learned duty Additional Sessions Judge, vide order dated 08.06.2020, with the following observation.

*"The petitioner/accused is young student, previously having no enmity and no previous record. The petitioner allegedly attempted to abduct another young boy, therefore, Section 511 PPC has been added, which provides half sentence of the original offence. Due to attempt of offence, all the offences do not fall under the prohibitory clause. Petitioner/accused is no more required for any further investigation. All these facts make the case of prosecution of further inquiry."*

7. The petitioner while arguing his case on the basis of abovementioned order contends that the order on the face of record is illegal and has been passed without hearing to the petitioner at the time of grant of post arrest bail as he was not available due to COVID-19 Pandemic lockdown in his area of residence and as such, this fact was recorded by learned duty Additional Sessions Judge in the following manner.

*"Conversely, junior counsel appearing on behalf of the complainant submitted application for adjournment*

*contending therein that his senior Mr. Zahid Asif Chaudhry, Advocate is unable to appear as the area of his residence has been sealed due to spread of corona virus. However, the learned SPP for the State vehemently opposed the bail and requested for dismissal of bail petition."*

8. I have gone through the contention raised by the petitioner as well as record position, which transpires that offence under Sections 337-J and 337-F(i) was incorporated by the investigating agency after transfer of investigation which was not discussed or referred by the learned Additional Sessions Judge as the matter was not investigated to that extent at the time of passing of impugned order.

9. The record further reflects that matter was transferred from previous Investigating Officer to CIA and as such, matter is under investigation. However, this Court will not comment on the merits of the case, especially when the principal ground of the petitioner is that he was not given a right of hearing by the learned duty Additional Sessions Judge on 08.06.2020, despite the fact that a request on his behalf for adjournment was made through an application, this aspect shows that principle of *audi alteram partem* has not been adhered to by the said Court.

10. In view of this peculiar ground the case requires to be heard again on merits. The petitioner was not given hearing, which is an <sup>in</sup>alienable right of person to be heard by the Courts in terms of Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, the captioned criminal miscellaneous petitions for cancellation of bail are hereby ACCEPTED, the order dated 08.06.2020 is SET ASIDE and matter is remanded to the learned Sessions Judge (West), Islamabad to decide the same in accordance with law.

However, the respondents shall be treated on ad-interim post arrest bail till the final decision of the post arrest bail applications, which shall be deemed to be pending. The parties are directed to appear before the learned Sessions Judge (West), Islamabad on 22.07.2020.

**(MOHSIN AKHTAR KAYANI)**  
JUDGE

Khalid Z.