

Form No: HCJD/C-121
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 1381-B of 2021

Yasir Hafeez and another

Versus

The State and another

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	18.02.2022	Syed Iqbal Hussain Shah Gillani, Mr. Muhammad Younis Kiani, Advocates for the petitioners alongwith petitioners. Mr. Naveed Malik, Advocate for respondent No.2. Mr. Fahad Ali, learned State Counsel. Saqib Mehmood, ASI.

The petitioners seek bail before arrest in case F.I.R. No. 595/21, dated 14.10.2021, offence under section 363 P.P.C., registered at Police Station Tarnol, Islamabad.

2. First petition for bail before arrest of the petitioners/accused was dismissed by the Court of learned Additional Sessions Judge, West-Islamabad on 08.11.2021 and second petition for bail before arrest of the petitioners / accused was dismissed by the same Court vide order dated 04.12.2021.

3. It is alleged that the petitioners have forcibly abducted the minor Ahmad Ali aged about 08 years from his school on gun point in a black coloured car, hence the instant FIR.

4. Learned counsel for the petitioners, *inter alia*, contends that there is a family dispute between the parties; the petitioner Yasir Hafeez is uncle and Muhammad Shafique is cousin of the minor; they have not committed any offence; case has been registered with malafide intentions and ulterior motives just in order to settle the score of family litigation; the minor is in custody of his mother; no recovery is to be effected from them, hence the petitioners are entitled for grant of bail before arrest.

5. Learned State counsel assisted by learned counsel for the complainant states that the petitioners are specifically nominated in the FIR; there is sufficient evidence available against them; they have abducted the minor as the matter for his custody was

pending in the learned Family Court, so, the petitioners / accused just in order to avoid the delay in decisions of Family Court have committed instant crime and forcibly abducted the minor and deprived the father and grand-father from lawful custody of minor, hence the petitioners are not entitled for grant of bail before arrest.

6. Arguments advanced by learned counsel for the parties, learned State Counsel have been heard and record has been perused with their able assistance.

7. The petitioners are specifically nominated in the FIR; on the complaint of grand-father of the minor, FIR has been registered; police has also recorded statement of one Qari Ameer who is eye-witness of the occurrence; statement of principal of school has also recorded by the police who has stated that the minor was got admitted in school by his father / grand-father and they were paying dues/fees etc and were dropping and picking up the minor

regularly from the school; police has also taken into possession the school admission form of the minor which indicates that he was admitted in the school by his father / grandfather; the principal has further stated in his statement that on the date of occurrence the minor was brought in school by his grandfather, whereas, security guard has stated in his statement recorded u/s 161 Cr.P.C. that on the date of occurrence, the minor was kidnapped by the accused in a black car forcibly from outside the school.

8. Mother of the minor has got recorded her statement in the Court of Malik Zafar Iqbal, Judge Family Court, Pindigheb (Attock) on 12.07.2021, that the minor is in custody of his father; the petition filed by the mother u/s 491 Cr.P.C. was also dismissed on 19.07.2021 by the Court of learned Additional Sessions Judge, Islamabad on the ground that the minor was in custody of his father.

9. Said judicial record clearly indicates that the minor was in custody of his father; he

was admitted in school by his father and all the dues/fees etc., picking and dropping from the school was done by his father / grandfather.

10. Though the minor is in custody of his mother but the practice of kidnapping and snatching the minor forcibly by relatives cannot be allowed as law clearly provides the mechanism for getting custody of the minors through the Courts of law and if this act of kidnapping is encouraged then everyone will take law in his/her hands and people will not approach the Courts for redressal of their grievances.

11. I.O present in the Court states that he has conducted thorough investigation, recorded statements of the eye-witnesses as well as enquired from other persons who were present at the spot but did not opt to record their statement under section 161 Cr.P.C. and as per opinion of the I.O, the petitioners / accused are very well involved in the commission of crime. I.O has stated that

he needs custody of the petitioners/accused for effecting recovery of weapons and other incriminating evidence.

12. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon "**PLD 1994 Supreme Court 65, PLD 1994 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937**".

13. Bail before arrest cannot be claimed as a matter of legal right in each case and also it cannot be expected that it would be granted in each case unless legal requirements laid down are met. It is to be kept in view that bail granted before arrest, causes setback in investigation and can stand as stumbling block in the way of recovery of incriminating articles. Reliance is placed on a case titled as

"Waleed Arfaqat Vs. The State and another" (2021 MLD 1226).

14. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Sarwar Sultan Vs. The State" (PLD 1994 Supreme Court 133)**, that:

"Grant of pre-arrest bail means that accused is exempted from joining the investigation and by not joining the investigation, prosecution case may suffer for want of recovery of incriminating articles and other material, which may be necessary to connect the accused with commission of alleged crime".

15. It is well settled law that relief of pre-arrest bail is granted only in those matters where it would appear that registration of such cases was passed on enmity / malafide or where no offence was shown to have been committed on the very face of record. This is not the position in the instant case. Reliance is placed upon cases reported as **"PLD 1983 Supreme Court 82, 1996 SCMR 74, 1996**

SCMR 71 and 2019 SCMR 1129.

16. In the recent order passed by Hon'ble Supreme Court of Pakistan in a case titled as "**Kamran Attaullah and another Vs. The State passed in Criminal Petition No. 149-K of 2020**", it is held that:

"It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure / process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information / evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means".

17. There can be no escape from the fact that the petitioners / accused are nominated in the FIR as well as in the statement of witnesses recorded by the police under

Section 161 Cr.P.C. Learned counsel for the petitioners / accused have not shown any malafide against the complainant or police for registration of instant FIR. Custody of the petitioners / accused is required for the purpose of recovery and investigation. There is sufficient evidence available on record to connect the petitioners / accused with the commission of crime.

18. Considering the above facts and circumstances, I am clear in my mind that the petitioners / accused have failed to make out a case for grant of pre-arrest bail. Consequently, instant bail petition stands **dismissed**. Ad- interim pre-arrest bail already granted to the petitioners / accused dated 23.12.2021, passed by this Court are hereby recalled.

19. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE