

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 970-B of 2020.

Asad Mumtaz.

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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03. 24.09.2020. Mr Mohsin Khan Abbasi and Ch. Muhammad Jahangir, Advocates for the petitioner.
Raja Muhammad Shafaat Khan, Advocate for the complainant.
Mr Sadaqat Ali Jahangir, State Counsel.
Mr. Abdul Sattar, Inspector/I.O. with record.

The petitioner Asad Mumtaz son of Mumtaz Hussain Abid has sought post-arrest bail in case FIR No. 598, dated 21.12.2019, registered under Sections 302, 364-A, 377, 377-B, 201, 34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Bahra Kahu, Islamabad.

2. Brief facts as narrated in the FIR, are that the complainant namely Mukhtar Rathor, father of the abductee reported that his son aged about five years was missing. Hence, the instant FIR. Later, the dead body of the victim was recovered.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case with malafide

intention; the petitioner has been involved in the instant case after recording of supplementary statement of the complainant; no incriminating material was recovered from the petitioner despite being on physical remand; dead body of the abductee was recovered on the pointation of the co-accused and the petitioner has no nexus with the recovery; offences are not attracted against the petitioner; the petitioner has been incarcerated for the last nine months; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; further incarceration of the petitioner will not serve useful purpose; the petitioner is innocent; the petitioner has been involved in the instant case to harass and humiliate him; the petitioner has no criminal record; the petitioner is not a habitual, desperate, hardened or dangerous criminal; the petitioner was not present at the place of occurrence; there is malice on part of the prosecution; case against the petitioner comes within the ambit of further inquiry; the petitioner is not involved in the abduction and murder of the deceased; no specific role has been attributed to the petitioner. The learned counsel has placed reliance on the cases "*Mudassar Altaf and another vs. The State*" [2010 SCMR 1861], "*Asfand Yar Khan and another vs. The State and another*" [2020 SCMR 715], "*Muhammad Pervez and others vs. The State and others*" [2007 SCMR 670], "*Khalid Javed Gillan vs. The State*" [PLD 1978 S.C. 256], "*Naeem Akhtar vs. The State*" [1996 SCMR 511], "*Ehsan Ullah vs. The State*" [2012 SCMR 1137], and "*Mushtaq and others vs. The State*" [2012 SCMR 109]. Hence, prayed for the grant of post arrest bail.

4. On the other hand, the learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Abdul Sattar, Inspector. They have argued that; the petitioner was nominated in the

FIR with specific role after recording of supplementary statement of the complainant alongwith other accomplices; there is no delay in lodging the FIR as the complainant was searching for his son; the dead body of the deceased was recovered; the petitioner had facilitated the main accused; the statement of the co-accused namely, Hamza Jahangir was recorded under section 164 Cr.P.C., wherein he had specifically nominated the present petitioner with the commission of the alleged offence; the petitioner is fully involved in the abduction and, thereafter, murder of the deceased; offences fall within the ambit of prohibitory clause of section 497 of Cr.P.C; report under section 173 of Cr.P.C. has been submitted before the learned trial court and trial of the case is to be commenced shortly; the petitioner has committed heinous offence and he does not deserve for extending concession of bail; hence prayed for dismissal of instant bail petition. Reliance has been placed on the cases "*Ghulam Ahmed Chishti vs. The State and another*" [2013 SCMR 385], "*Raja Muhammad Irshad vs. Muhammad Bashir Goraya and others*" [2006 SCMR 1292], "*Naseem Malik vs. The State*" [2004 SCMR 283] and "*Muhammad Imran and others vs. The State*" [2008 P.Cr.L.J. 1555].

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

6. The petitioner was not named in the FIR and he was nominated in the supplementary statement of the complainant. The statement of co-accused was recorded under section 164 of Cr.P.C., wherein the latter described the role of the petitioner. During the course of investigations sufficient material has been collected and placed on record, prima facie, connecting the petitioner to the commission of the

offence. Report under section 173 Cr.P.C. has been submitted before the learned trial Court. The offences ^{*alleged to have been*} committed by the petitioner fall within the ambit of prohibitory clause of section 497 of Cr.P.C. There is nothing on record to show that the complainant had any enmity or had any reason to falsely implicate the petitioner in the instant case. The incriminating material available on record does not entitle the petitioner to the concession of bail.

7. In the circumstances this Court is of the opinion that the petitioner is not entitled to the concession of post arrest bail at this stage, hence the same is hereby **dismissed**. It is, however, expected that the trial Court will conclude the trial expeditiously.

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/**