

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.801-BC/2019

Safeer Akhtar.
Versus
MST. ZAITOON BIBI, ETC.

Petitioner by: Mr. Aziz Ullah Marwat, Advocate.
Complainant by: Qazi Khalil-ur-Rehman, Advocate.
State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Munir Khan, S.I.
Date of Hearing: 17.02.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition under Section 497(5) Cr.P.C. the Complainant Safeer Akhtar, seeks cancellation of pre-arrest bail of Respondents No. 1 and post arrest bail of Respondent No. 2, granted by learned Additional Sessions Judge Islamabad/GBV Court East/West, through two separate even dated orders i.e. 26.11.2019, in case FIR No.502/2019, dated 04.11.2019, for offence under section 364 PPC, registered at Police Station, Tarnol, Islamabad,

2. Learned counsel for the Petitioner submitted that impugned orders dated 26.11.2019, are not legally sustainable as the Respondent Nos. 1 & 2 have abducted/kidnapped the minor, a three year old daughter of the Petitioner. Learned Counsel has drawn the Court's attention to another FIR No. 508 of 2019, dated 13.11.2019, for offence under Section 188/341, 148/149, 186/353, 506 (ii), registered with Police Station Tarnol, Islamabad, on the complaint of SHO for creating hurdles with criminal force by the group favoring Respondent to prevent the Police from discharge of their duties/investigation of the case FIR No. 502/2019. Learned Counsel submitted that the accused are not entitled for bail as they are abusing the process of law and are continuously misusing the concession of bail and alleged that the Respondents/accused might be successful in tempering with the prosecution record. Learned counsel for the Petitioner in support of his contentions relied

on judgments reported as **1999 PCr.LJ 1 (HC LHR) and 2016 YLR 2752 (Gilgit Baltistan Chief Court)**.

3. On the other hand learned counsel for Respondents Nos. 1 and 2/accused contended that the minor was recovered after 8/9 days from somewhere else and not from possession of the accused persons. Learned Counsel submitted that the accused were not nominated in the FIR but were subsequently implicated falsely on the basis of suspicion. Learned Counsel further contended that the Challan has been submitted on 19.11.2019, and trial is under process, whereas accused are not misusing the concession of bail; and cooperating in the trial and there is no proof of tampering with the record as alleged by the Complainant. Moreover, grounds for cancellation of bail submitted in appeal are misconceived as these relate to pre-arrest bail. Learned Counsel in support of his contentions referred the case law reported as **2019 YLR 2374 (HC Balochistan), 2019 YLR Note 4(HC Balochistan), 2019 PCr.LJ Note 141 (GilgitBaltistan Chief Court) and 2020 PCr.LJ 164 (HC LHR)** and submitted that the petition filed by the complainant is liable to be dismissed.

6. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the record with their able assistance.

7. Perusal of the FIR reveals that the wife of the Petitioner went to the house of the accused persons for some spiritual treatment from where the three year old daughter went missing, therefore, the FIR was registered against some unknown abductees. Later on, during investigation Petitioner nominated Respondents No. 1 and 2 as alleged kidnapers while recording his statement u/s 161 Cr.P.C. Respondent No. 1 and 2 applied for pre-arrest/post arrest bails which were granted, vide orders dated 26.11.2019. It is an admitted fact that the Abductee has not been recovered from the possession of the accused Respondents and they were not initially nominated in the FIR. The record further shows that there is no incriminating material available which could directly connect the accused with the offence. Furthermore, Petitioner has failed to prove the allegation of misuse of concession of bail and tempering with the record by the accused Respondents, who admittedly are appearing for investigation during trial without any default.

8. The bail was allowed to the Respondents on the ground that prima facie their case falls within the ambit of further inquiry. If an accused person is enlarged on bail under Section 497(2), Cr.P.C. then ordinarily the Court should be very slow to interfere with that order as it is settled principle of criminal law that presumption of innocence remains in favour of accused, unless he is tried, convicted and sentenced by a competent Court. Even otherwise, release of an accused person on bail does not amount to his acquittal. His judicial custody is transferred to a private person who stands surety and commits himself to produce the accused person before the Court. Moreover, considerations for cancellation of bail are quite distinct from the considerations for grant of bail. Once bail has been granted by a competent Court of law, strong, extra-ordinary circumstances and exceptional grounds are required for its cancellation, whereas, in present case no sufficient material and grounds have been raised nor any illegality has been shown in the impugned order to seek cancellation of bail.

9. In view of the above, I do not find any merit in the Instant Criminal Miscellaneous Petition seeking cancellation of bail which is hereby dismissed, however, it is observed that observations made hereinabove are tentative in nature and may not prejudice the trial, which shall be proceeded strictly in accordance with law on the basis of material produced and the evidence available on record.

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan/**