

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 222-B of 2020.

Kabir.

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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02. 01.04.2020. Mr Zahid Ali Khan, advocate for the
petitioner.
Mr M. Atif Khokhar, State Counsel.
Mr Naseer, ASI with record.

The petitioner Kabir son of Sher Muhammad has sought post-arrest bail in case, FIR No. 48, dated 31.01.2020, registered under sections 376/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Khanna, Islamabad.

2. Brief facts as alleged in the FIR are that on 30.01.2020, the complainant's daughter namely, Anosha aged 13 years, went outside the house at 08:00 p.m. in Pindorian Market but did not return. It was alleged that three unknown persons dropped the abductee/victim outside the house at 12 at night in unconscious condition. Hence, the instant FIR.

3. The learned counsel for the petitioner has contended that; there is a considerable delay in registration of the instant FIR; the petitioner has no concern whatsoever with the alleged offence; there is no

abduction of the victim; the petitioner has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the instant FIR is false and frivolous; the petitioner is innocent; prosecution case is based on malafide; the petitioner has been incarcerated for almost two months; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; no incriminating material was recovered from the petitioner; the petitioner has not committed any offence; there is malice on part of the prosecution; the case against the petitioner comes within the ambit of further inquiry; the petitioner is not involved in abduction or rape with the abductee/victim; no specific role has been attributed to the petitioner. Hence prayed for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Naseer, ASI. They have opposed the grant of bail. It was argued that; the petitioner has a specific role in the commission of the alleged offence; FIR was lodged promptly; the complainant was searching for her daughter; the petitioner is involved in the abduction as well as commission of rape with the abductee/victim; the petitioner has committed a heinous offence; the petitioner with the help of his co-accused firstly abducted the victim and, thereafter, committed rape with her; offences under sections 376(ii)(iii) PPC have been added; statement of the abductee/victim has been recorded under section 164 of Cr.P.C., wherein she has specifically nominated the petitioner. Hence prayed for dismissal of the instant bail petition.

5. The learned counsel for the petitioner and the learned State Counsel has been heard and record perused with their able assistance.

6. Perusal of record shows that the abductee/victim had recorded her statement under section 164 of Cr.P.C., wherein she had nominated the present petitioner with a specific role. Furthermore, the police has added sections 376(ii)(iii) of PPC vide Zimni, dated 08.02.2020. Report under section 173 Cr.P.C. has been submitted before the learned trial Court and trial of the case is to commence shortly. The offences fall within the ambit of prohibitory clause of section 497 Cr.P.C. Furthermore, there is nothing on record to show that the complainant had any enmity with the petitioner. There is sufficient incriminating evidence available on the record to refuse the concession of bail to the petitioner.

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 shall 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/*