

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

Criminal Misc. No.636-B/2020

Danish

Vs

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. |
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| 03. | 22.04.2020 | Mr. Muhammad Sohail Khurshid, Advocate for petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Mr. Muhammad Inam Mughal, Advocate for complainant, Muhammad Riaz ASI P.S. Shahzad Town, Islamabad with record. |
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This is post-arrest bail petition by accused-petitioner {Danish} in case FIR No.55 dated 10.03.2020, under Section 365-B PPC Police Station Shahzad Town, Islamabad.

2. The record appended with the petition reveals that earlier bail petition of the petitioner was rejected by the learned Additional Sessions Judge/GBV Court, Islamabad-East/West vide order dated 02.04.2020.

3. Learned counsel for the petitioner contends that there is a delay of about nine hours in lodging the FIR; that as per contents of the FIR, offence under section 365-B PPC is neither mentioned nor made out; that complainant alleged to have acquired knowledge regarding abduction of his sister by the accused persons including the petitioner but there is no detail as to from whom he got the said information; that the statement recorded under Section 164 Cr.PC of the abductee/ victim girl denotes one Maratib Ali as the main accused and the present petitioner is innocent; that as per the medico legal report, no sign of bruise or abrasion is

found on the body of alleged victim and that the petitioner has been implicated falsely due to having friendly terms with the main accused, therefore, in the given circumstances, case of the petitioner falls within the ambit of further inquiry.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant responding to the submission regarding exoneration of the petitioner by the alleged abductee in her statement recorded under Section 164 Cr.PC, argued that the victim had given the true account of the incident whereby the main role is ascribed to accused Maratib Ali while the petitioner was the accomplice as she had specifically alleged that the petitioner along with others abducted her, coerced to sit in a taxi car and then they took her to the house of maternal aunt of the petitioner at Rawalpindi and thereafter in a park; that it was the cell phone of the petitioner which was used to make a call to the younger brother of accused Maratib and that offence under section 376 has been added on 27.03.2020 but the petitioner did not mention the same on the memo of the bail application, therefore, on this score, petition is defective and that the challan has already been submitted and the trial is in progress, therefore, petitioner is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. According to the contents of FIR, on 10.03.2020, at about 07:00 a.m., within the area of Frash Town, the petitioner alongwith Raja

Maratib and Faheem abducted Mst.Naila Bibi, sister of the complainant aged about 14/15 years, a student of 9th class when she was on her way to school for examinations.

7. The petitioner is specifically nominated in the FIR and his active participation throughout the occurrence is witnessed. The material role has been attributed to the petitioner as far as offence under Section 365-B PPC is concerned and role of the facilitator qua offence under section 376 PPC is visible. There is not a single piece of evidence available on record that why the respondent No.2/ complainant would falsely implicate the present petitioner in the occurrence. The offence alleged is not only a heinous crime but is considered an offence against the society and the punishment provided for the said offence is imprisonment for life including fine, non-bailable, non-compoundable and duly falls within the ambit of *prohibitory* clause of section 497(1) Cr.P.C. It is beyond imagination that the complainant would falsely implicate the present petitioner by levelling such an outrageous allegation against his own sister who is below the age of 15 years and is student of 9th class.

8. When the contents of FIR and the statement under section 164 Cr.PC of the alleged abductee/victim girl are put in juxtaposition, the active involvement of the petitioner in the occurrence is quite visible. The material available so far, particularly for the purposes of decision of the instant bail application, signifies role of the present

petitioner to the extent of abduction of minor girl who is student of 9th class, is fully attracted and to the extent of offence under section 376 PPC, as facilitator is established. No malice has been alleged. As far as the submission regarding MLR is concerned, the detailed report is still awaited and any comment upon the same would amount to deeper appreciation of the material collected by the prosecution which is not permissible at this stage. It is settled principle of law that while deciding bail application, the Court should consider allegations levelled in the FIR, other contents of FIR, statement under Section 161 Cr.P.C., under Section 164 Cr.P.C, incriminating material against the accused, nature and gravity of the charge and plea raised by the accused, while deeper appreciation of the evidence is not warranted and only tentative assessment of the material is to be made. In this respect, I am guided by the law expounded by the Hon'ble Supreme Court of Pakistan in case reported as "*Syed Lakhat-e-Hasnain Vs The State (2010 SCMR 855), Shahzad Ahmad Vs The State (2010 SCMR 1221), Asif Ayub Vs State (2010 SCMR 1735) and Salman Vs State (2014 PCr.LJ 641)*".

9. As far as submission regarding non-mentioning of offence under section 376 PPC in the memo of the bail application is concerned, suffice it to say that the order dated 02.04.2020 passed by the learned ASJ/GBV Court, East/West finds mention of section 376 PPC in para-4. In the case law reported as *Amanat Ali Vs The State (PLJ 1980 CRC Lahore, 432) and Mst. Shahida Parveen Vs The State and other (1995 MLD 1082)*, it was held that "*it is matter of*

record, that section 376 PPC was added subsequently and that the decision on a bail application by the Court is in respect of the FIR/occurrence in its entirety.” This Court is, therefore, not precluded from deciding the bail application as a whole even in non-mentioning of any offence in the memo of the bail application.

10. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is dismissed. However, the learned Trial Court is directed to conclude the trial preferably within a period of three months.

11. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran