

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

Criminal Miscellaneous No.639/B of 2019

Abbas Khan
VS
The State and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	30.10.2019.	Mr. Muhammad Tahir Jalal Wattoo, Advocate for the Petitioner. Mr. Shafqat Abbas Tarar, Advocate for respondent No.2. Mr. Awais Haider Malik, State Counsel. Mr. Azhar Shah, DSP (Legal). Sar Gul Khan, ASI.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No.74 of 2019, dated 27.02.2019, for offence under Section 364/34 P.P.C., Police Station Lohi Bhair, Islamabad.

2. The case of the prosecution against the petitioner is that on the complaint of respondent No.2, an F.I.R. was registered in which it was alleged that the petitioner alongwith others have abducted the minor daughter of the complainant.

3. The petitioner filed bail after arrest before the learned Judicial Magistrate (East), Islamabad, which was dismissed, vide order dated 14.05.2019. The petitioner also applied for bail after arrest before

learned Additional Sessions Judge-East, Islamabad, which was also dismissed, vide order dated 30.07.2019.

4. Learned counsel for the petitioner, *inter-alia*, contended that the alleged abductee contracted *Nikkah* voluntarily with him; that wrong provision has been added in the F.I.R. and the offence alleged is not attracted; that the investigation stands concluded and the trial has commenced. It was also contended that one of the co-accused of the petitioner was granted bail by this Court i.e. "*Ghulam Mustafa Vs. The State and another*" (**Criminal Misc. No. 218/B of 2019**).

5. Learned State Counsel alongwith counsel for the complainant, *inter-alia*, contended that the petitioner is minor and the marriage/*Nikkah*, if any, is in violation of the Child Marriage Restraint Act, 1929.

6. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. One of the co-accused of the petitioner has already been granted bail by this Court, vide order dated 06.05.2019, in Criminal Misc. No.218/B of 2019. The

relevant paragraph of the said order is reproduced and as follows:-

“7. The post arrest bail of one of the co-accused of the petitioner namely Muzaffar Khalil was allowed by Additional Sessions Judge, East-Islamabad on 16.03.2019. The alleged abductee solemnized Nikkah with the son of the petitioner and in that the age has been mentioned as about 17/18 years, she has sworn an affidavit to the effect that she has willingly entered into Nikkah, however, the B form produced on record shows that the age of abductee is 12 years approximately; she also made statement under Section 164 Cr.P.C that she was coerced to enter into Nikkah. The referred facts, made the case against the petitioner is one of further inquiry. Reliance is placed on cases reported as “Zawar Hussain vs. The State and others” (2018 P Cr.LJ 453), “Muhammad Shahbaz vs. The State and another” (2018 P Cr.LJ 1025), “Muhammad Bilal vs. The State and another” (2018 MLD 899) and “Muhammad Azam vs. The State and another” (2018 P Cr. LJ Note 175).”

8. In view of the above position and following the principles of consistency, the instant petition is **allowed** and the petitioner is enlarged on bail after arrest subject to furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees One Hundred Thousand Only) with one (01) surety in the like amount to the satisfaction of the

learned Trial Court, however, learned Trial Court is directed to conclude the trial within a period of three (03) months from the date of this order. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned Trial Court at the time of trial.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua