

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

531-P
CrM BA # /2015

Haroon s/o Hazrat Khan
R/o Moh Now, Dabgari, Peshawar.....



VERSUS

1. The State.
2. Mst: Rabia d/o Mismillan Shah (0301-897653)
R/o People Colony Bana Mari Peshawar..... Respondents.

Case FIR NO 134 Dated 30/1/2015
U/S 365-B/498-B/34
P.S. Bana Mari (Peshawar)
=====

Application for the released of the accused
/petitioner on bail till the final disposal of the
case.
=====

Respectfully Sheweth:-

1. That the accused/ petitioner stand charged in the instant case by the local police and since his arrest he is in judicial lock up in Central Prison Peshawar.
(Copy of FIR is annex "A")
2. That the accused /petitioner submitted bail application for his release on bail in the court of ASJ-1, Peshawar, but the same was dismissed on 25/2/2015. (Order is annex B & C)
3. That now the accused/ petitioner seeks his released on bail on the following ground amongst other:-

GROUND.

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- A. That the accused/ petitioners is innocent in the instant case and has been implicated falsely and maliciously for ulterior motive by the complainant.
- B. That admittedly there is delay of more then five months in lodging the report.
- C. That the matter in between the parties is of civil nature, because admittedly there is a nikah in between the complainant and the accused/petitioner dated 9/6/2014 duly supported by the Affidavits of the complainant. (Copy of Nikah Nama & addidavit are annex D)

Judgment Sheet

IN THE PESHAWAR HIGH Court PESHAWAR
JUDICIAL DEPARTMENT

Cr. M No. 531-P of 2015

JUDGMENT

Date of hearing.....

Petitioner.....

Respondent.....

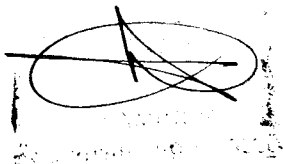
QALANDAR ALI KHAN, J:-

The

petitioner, Haroon, is seeking post arrest bail in case FIR No.134 dated 30.1.2015 under Sections 365-B/498-B/34 PPC, Police Station Bana Mari, Peshawar, which was registered on the report of Mst.Rabia, complainant-respondent No.2, wherein she charged the accused/petitioner along with co-accused, namely, Abbas Khan, Tahir and Mst Khialai for her kidnapping/abduction and forcing her to enter in-to 'Nikah' with accused/petitioner, who also subjected her to sexual intercourse for five months. In her report, complainant alleged that co-

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accused Mst. Khialai used to reside in Mohallah New Dabgari in their neighbourhood and was on visiting terms with her family, and continued to visit them in the peoples colony after they had shifted to the latter place around seven months ago. Complainant further alleged that when she was all alone at home five months before lodging the report on 28.01.2015, Mst. Khialai visited her and took her along on the pretext of taking her ailing young child to hospital, but in the car parked out side the house three sons of Mst. Khialai including the accused/petitioner and co-accused Abbas and Tahir were sitting and they forceably made her to sit in the car and also made her unconscious through some intoxicant substance. According to the complainant, she found herself in another house on regaining senses, where she was forceably made to sign a paper which later turned out as 'Nikahnama' with the



accused/petitioner. The complainant charged the accused/petitioner for sexual intercourse for five months during which she was kept in confinement in a room locked from outside. The complainant claimed that one day prior to lodging of the report i.e 27.1.2015, she found door of the room open and thus managed to flee the house and reached home where she narrated the occurrence to her family members who advised her to lodge report in the Police Station.

3. During investigation, the complainant was medically examined, showing her probable age as 18-20 years, as against age of complainant shown in the FIR by her as 14 years. Moreover, no sign of violence or struggle was found on the body of the complainant. The accused/petitioner was arrested on the same date i.e 30.1.2015 when case was registered in the Police Station. However, the remaining three accused named in the

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FIR are still at large, and after proceedings under Sections 204 and 87 Cr.PC, challan has been submitted against them under Section 512 Cr.PC; at the time of submission of complete challan against the accused/petitioner.

4. Arguments of learned counsel for the accused/petitioner, learned AAG assisted by learned counsel for complainant/respondent No.2 heard, and record perused.

5. Mr.Hussain Ali, Advocate, learned counsel for the accused/petitioner, argued that there was inordinate delay in lodging the FIR by the complainant, who had wrongly given her age as 14 years in the FIR, though she was grown up and aged about 18 to 20 years, according to the medical report. The learned counsel also referred to 'Nikahnama' executed at the time of 'Nikah' of the complainant with the accused/petitioner on 09.06.2014, and also affidavit on behalf of the complainant

whereby the 'Nikah' was further re-inforced. Learned counsel pointed out that one day before lodging of report by the complainant, the accused/petitioner had lodged a report in Police Station Shah-Qabool recorded at Sr. No.8 of the Daily Diary dated 27.1.2015, wherein the accused/petitioner had complained about desertion of the complainant and her leaving his house because of strained relations with him while taking away cash amount of Rs.500000/- and 10 'tola' gold. The learned counsel further pointed out that the complainant had also lodged a suit for dissolution of marriage on the ground of cruelty and recovery of dower amounting to Rs.100000/- and 3 'tola' gold ornaments. Learned counsel stressed that case of the accused/petitioner would, therefore, fall within the ambit of further inquiry, in the light of judgments in cases reported as 2012 MLD 1958 (Lahore) and 2003 P.Cr.LJ 825 (Karachi).

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6. The learned AAG assisted by Mr. Abdul Latif Khan Afridi, Advocate, learned counsel for complainant/respondent No.2, opposed grant of bail to the accused/petitioner, inter alia, on the grounds that a young girl of tender age has been subjected to forced 'Nikah' and sexual intercourse by the accused/petitioner with help and active support of absconding co-accused after her kidnapping/abduction with sinister design of forcing her 'Nikah' with the accused/petitioner against her free will, as is evident from her report to the police after complainant managed to flee the place where she was kept in illegal confinement and subjected to inhuman acts. Learned counsel for complainant/respondent No.2 vehemently contended that no parents in our society would so readily accept the stigma of kidnapping/abduction of their young unmarried daughter unless they have

exhausted all their remedies to confirm themselves about the commission of such heinous crime by the perpetrators. The learned counsel urged that report of the complainant is a glaring proof of the fact that she was not a consenting party to the 'Niakh', and the 'Nikah-Nama' and all other documents in support of 'Nikah-Nama' were obtained through force and coercion. In order to defend delay in lodging the report, the learned counsel placed reliance on PLD 2007 SC 71 and 2014 MLD 1311 (Sindh).

7. Admittedly, the FIR has been lodged after inordinate delay of five months by the complainant alleging therein her kidnapping/abduction by the accused/petitioner and co-accused. On a query, it was disclosed that both the parents of the complainant are still alive, and brother of the complainant is pursuing the case on her behalf; but, intriguingly, neither parents of the complainant lodged

report despite her dis-appearance and remaining untraceable for five months nor even the report was lodged by them or brother of the complainant when she reached home and informed her family members about the occurrence. This aspect of the case remained unexplained that if family honour was the only factor restraining parents and other family members of the complainant from lodging the report, what was the reason for sending the complainant all alone to the Police Station for lodging the report. All these facts are yet to be probed into, thus making case that of further inquiry.

8. Besides, the 'Nikah Nama' coupled with affidavit on behalf of complainant and statements under Section 161 Cr.PC of two 'Nikah' witnesses namely Ghulam Muhammad and Jehanzeb Khan, supporting 'Niakh', together with report of the accused/petitioner in Police Station Shahqabool on 27.1.2015 showing

desertion of the complainant owing to strained relations while taking away cash amount of Rs.500000/- and 10 'Tola' gold would further make case of the kidnapping/abduction against the accused/petitioner that of further inquiry.

9. Furthermore, neither absconsion of the co-accused can have any bearing on the case of the accused/petitioner nor the judgments cited at the bar by the learned counsel for complainant/respondent No.2 would be attracted to the instant case, as judgment in the case reported as PLD 2007 SC 71 is not applicable to the facts of this case for the simple reason that the cited case related to kidnapping for ransom. Likewise, 2014 MLD 1311 (Sindh) has no application to the facts and circumstances of the instant case, as each and every criminal case has its peculiar facts and circumstances which are to be taken into consideration for the purpose of bail. The facts and circumstances

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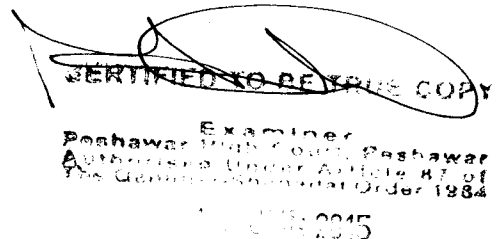
distinguishing this case from other cases involving delay have, rather, been explained above.

10. In short, case of the accused/petitioner squarely falls within the category of a case of further inquiry; therefore, on acceptance of the application, the accused/petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.100000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

Announced.
21.04.2015


JUDGE

Sd/ Qalandar Ali Khan


CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 47 of
The Government of Punjab Order 1984
11 APR 2015