

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Muhammad Ali Mazhar

**Criminal Petition No.1072-L of 2022**

Against the order dated 22.06.2022 passed by  
Lahore High Court, Lahore, in Cr.Misc.No.31931-  
B/2022

Muhammad Nadim s/o Pervaiz Akhtar ...Petitioner

**Versus**

The State and another ...Respondents

For the Petitioner: Mr. Muhammad Tariq Zafar, ASC

For the State: Ch. M. Sarwar Sandhu, Addl. PG, Punjab  
Arif Ashfaq, DSP  
Ishfaq, ASI

For the Complainant: Mr. Zubair Afzal Rana, ASC  
(via video link from Lahore)

Date of Hearing: 08.11.2022

**ORDER**

**Muhammad Ali Mazhar, J.** By means of this Criminal Petition for leave to appeal the petitioner impugns the order dated 22.06.2022 passed by learned Lahore High Court in Cr.Misc. No.31931-B/2022, whereby he was declined post-arrest bail in FIR No.69/2021 dated 23.02.2021 lodged under Sections 365 and 337-L(2), PPC at Police Station Sarai Mughal, District Kasur.

2. The genesis of the incident as narrated in the FIR is that, on 22.02.2021, that the complainant was coming back to his village on motorbike accompanied by Tanveer s/o Mansha and Faisal s/o Shah Muhammad on another motorbike and when they reached the vicinity of Kacha Pakka Road, near Chaudhry Sakhi at about 4:00 p.m., the accused persons were sitting there who intercepted the complainant and abducted him at gunpoint. Thereafter they took him to Kot Bamana Wala, Bashmoola Hinjraye Kalan where they snatched Rs.1,31,500/- from the complainant and also asked him to call upon his nephew, Ali Raza, on his cellphone to bring Rs.30,00,000/- otherwise they will kill him. It is also alleged in the FIR that the accused persons tortured the complainant, but on begging and supplication (منت سماجت) to the accused persons, he saved his life and

emancipated. The motive behind the occurrence was that the accused Pervaiz Akhtar (alias Papu) remained in judicial custody for about 8 or 9 months in Crime No.15/2020 lodged under Sections 302 and 34, PPC at Police Station, Sarai Mughal, District Kasur, who assumed that the complainant had pursued the said case. After dismissal of post-arrest bail application by the Judicial Magistrate, Pattoki, District Kasur (under Section 30), the petitioner moved his post-arrest bail before the learned Additional Sessions Judge, Pattoki, District Kasur which was dismissed on 26.04.2022. Thereafter, the petitioner approached the High Court but his bail petition was again dismissed *vide* impugned order dated 22.06.2022.

3. The learned counsel for the petitioner argued that the offences mentioned in the FIR does not fall within the prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'). He further argued that the petitioner is entitled for concession of bail on the rule of consistency as the other two accused, Tanveer and Waqas, have already been granted post-arrest bail by the Trial Court *vide* orders dated 10.03.2022 and 21.03.2022. The complainant in the Trial Court also submitted an affidavit in which he did not accuse Waqas and entered into a compromise with him.

4. The learned Addl. Prosecutor General, Punjab ("Addl. PG") argued that the petitioner is nominated in the FIR and also demanded ransom. According to him sufficient material is available which connects the petitioner with the commission of offence but nothing was argued to oppose the grant of bail on the rule of consistency.

5. The learned counsel for the complainant contended that the petitioner is nominated with specific allegations in the FIR and sufficient incriminating material is available which connects the petitioner in participation of the crime. However, he could not controvert that even in non-compoundable offence, the complainant submitted an affidavit in the Trial Court for conceding the bail petition and alleged that he has settled the matter with Waqas and has not accused him for indictment. The learned counsel has also not denied the fact that another accused, Tanveer Ahmed, has been granted post arrest bail by the learned Trial Court.

6. Heard the learned counsel for the petitioner, learned Addl. PG and learned counsel for the complainant. According to Section 365, PPC, whoever kidnaps or abducts any person with intent to cause that

person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which extend to seven years, and shall also be liable to fine. Whereas another section incorporated in the FIR, i.e. Section 337-L(2) PPC, describes the punishment for other hurt and, according to sub-section (2), whoever causes hurt not covered by subsection (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with *daman* or with both. According to the criteria and yardsticks laid down under Section 497 Cr.P.C, if the accused of any non-bailable offence is arrested he may be released on bail but he shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. There is no specific role assigned to the petitioner, rather all the accused have been incriminated with composite and alike role in the commission of offense out of whom, two accused have already been granted post arrest bail by the Trial Court. Though Section 365, PPC is non-compoundable, however, according to the affidavit submitted in the Trial Court, the complainant conceded to the bail of Waqas and does not want to indict him for the charge and so far as the bail granted to Tanveer Ahmed is concerned, nothing was said that any petition for cancellation of bail was moved against him if the complainant was aggrieved of his bail. The complainant himself narrated in the FIR that he was asked to call upon his nephew, Ali Raza, on his cellphone to bring Rs.30,00,000/- otherwise they will kill him, but when he beseeched and supplicated the accused persons, they spared him. The FIR is silent regarding whether any ransom amount was paid or not. There is a marked distinction between the pith and substance and quantum of punishment in the commission of offence under Section 365 and Section 365-A PPC. According to the learned counsel, the petitioner is incarcerated since 24.11.2021, whereas the other two accused persons have been granted bail on 10.3.2022 and 21.3.2022 and there is no swift progress in the trial right now. The role of the two accused that were granted bail is not dissimilar to the role assigned to the petitioner in general. The rule of consistency or in other words, the doctrine of parity in criminal cases including bail matters encapsulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also on the principle that like cases should be treated alike but after accurate

evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying doctrine of parity in bail matters, the Court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not.

7. Besides encompassing the rule of consistency or parity for considering the grant of bail to the petitioner in the present set of circumstances, we also cannot lose sight of important aspects of the case which need to be thrashed out and probed that who in fact snatched money from the set of accused, who maltreated and caused injuries to the complainant, whether an individual or jointly, or whether he was set free with or without payment of alleged claim of ransom. At the same time another facet of the case cannot be ignored that accused Waqas was implicated with the same role in the FIR but subsequently he was let off by the complainant and he was enlarged on bail with the concurrence of complainant in a non-bailable and non-compoundable case. All these crucial factors including motive of crime are to be examined and decided by the learned Trial Court after recording evidence and a full-fledged trial and obviously the burden of proof lies on the prosecution to prove the culpability and accountability of each accused but at present, we feel that in all attending circumstances the case of the petitioner is of further inquiry as well and also covered under the rule of parity. This Court in the case of Muhammad Fazal alias Bodi vs. State (1979 SCMR 9) released the petitioner on bail on the principle of requirement of consistency for the reason that the co-accused to whom a role similar to that of petitioner was attributed had been so released on bail.

8. It is well settled that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that the object of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than let him rot behind bars. The

accused is entitled to expeditious access to justice, which includes a right to a fair and expeditious trial without any unreasonable and inordinate delay. In the case of Zaigham Ashraf v. State and others (2016 SCMR 18), this Court held that the words "reasonable grounds" as contained in Section 497, Cr.P.C., required the prosecution to show to the court that it was in possession of sufficient material/evidence, constituting 'reasonable grounds' that accused had committed an offence falling within the prohibitory limb of Section 497, Cr.P.C. For getting the relief of bail accused only had to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case and he was entitled to avail the benefit of it. To curtail the liberty of a person was a serious step in law, therefore, the judges should apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively. Such exercise should not be carried out in vacuum or in a flimsy and casual manner as that would defeat the ends of justice because if the accused charged, was ultimately acquitted at the trial then no reparation or compensation could be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject did not provide for such arrangements to repair the loss, caused to an accused person, detained in jail without just cause and reasonable grounds. While the dictum laid down in the case of Alam Zeb and another v. State and others. (PLD 2014 SC 760), reasonable grounds had to be grounds which were legally tenable, admissible in evidence and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary or presumptuous.

9. We are also of the view that, whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in jail during the trial. The prosecution, in order to make out a case for refusal of bail to an accused, is primarily supposed to place on record material on the basis of which he is believed to be involved in a non-bailable offence, but in the absence of such material the court, for the purpose of releasing the accused on bail, instead of dilating upon the facts of the case in details, can dispose of the matter by holding that his detention

is unjustified or unreasonable. Reference can be made to **PLD 1996 SC 241** and **PLD 2002 SC 572**.

10. In the wake of the above discussion, this Criminal Petition is converted into an appeal and allowed. The petitioner is granted post arrest bail subject to furnishing of bail bonds in the sum of Rs.200,000/- (Rupees two hundred thousand) with one solvent surety in the like amount to the satisfaction of the learned Trial Court. The petitioner is directed to join the investigation and appear on each and every date of hearing before the learned Trial Court. However, if the petitioner misuses or abuses the concession of the bail and does not cooperate in the investigation and the trial, the learned Trial Court may be at liberty to cancel the bail. The observations made in this bail order are tentative in nature and shall not prejudice the case of either party.

Judge

Judge

ISLAMABAD  
8<sup>th</sup> November, 2022  
Mudassar/<sup>☆</sup>  
Approved for reporting