Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Miscellaneous No.1066-B /2021

Jameel Ahmad
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.
	21.10.2021	Raja Rizwan Abbasi, Advocate for the petitioner. Mr. Babar Hayat Samor, Advocate for the complainant/respondent No.2. Mr. Zohaib Hassan Gondal, State Counsel with Abdul Sattar, Inspector.

The petitioner namely Jameel Ahmed seeks bail after arrest in F.I.R. No.380/2021 dated 20.07.2021 under Sections 302, 376, 109, 176, 201, 511, 118, 362, 364, 368 & 148 PPC, Police Station Kohsar, Islamabad.

2. On the complaint of Shaukat Ali Muqaddam the abovementioned FIR was registered wherein it was alleged that on 19.07.2021 he had gone to buy a sacrificial goat and when he returned his wife informed that their daughter Noor Muqaddam is not present at home. The call was made on the cellular phone of Noor Muqaddam and she responded that she is going to Lahore with friends and would return within a day or two. On 20.07.2021 in the afternoon Zahir Zakir Jaffer called that Noor Muqaddam is not with him; however, at about 10:00 pm it was informed that Noor Muqaddam has been

killed. When complainant reached House No.7, Street No.60, F-7/4, Islamabad which is the house of Zakir Jaffer, it transpired that his daughter has been brutally killed.

3. Initially, the petitioner was not nominated in the FIR but was implicated subsequently.

4. The petitioner applied for bail after arrest which was dismissed by the learned Additional Sessions Judge (West), Islamabad vide order dated 14.09.2021. Hence the petition.

5. Learned counsel for the petitioner, *inter alia,* contended that in the report under Section 173 Cr.P.C. filed by the Investigation Officer no direct role has been attributed to the petitioner; that the investigation stands concluded and the petitioner is not required for the same; that the petitioner has been implicated on the basis that he is a complicit in the offences under Sections 368 & 302 PPC which is not the case inasmuch as there is no evidence brought forth by the prosecution through statements under Section 161 Cr.P.C. or otherwise to indicate that the petitioner had active knowledge of the offences in question or was directly or indirectly involved in the matter; that the petitioner is working as a cook at the residence of Zahir Zakir Jaffar and never

really got involved directly in the instant case or even indirectly; that the case against the petitioner is one of further inquiry. It was also contended that the case of the petitioner is on different footing from the co-accused Zakir Jaffar and Asmat Zakir Jaffar, hence bail rejection order with respect to the said co-accused would not be applicable. Reliance was placed on the case titled ***Muhammad Umar v. The State and another*** **(PLD 2004 Supreme Court 477)**.

6. Learned State Counsel alongwith learned counsel for the complainant/respondent No.2, *inter alia,* contended that there is call data record to the effect that the petitioner was in touch with Asmat Zakir Jaffar, hence was aware of the fact of abduction and murder of Noor Muqaddam; that in the investigation the petitioner has been found guilty; that challan has been submitted and even the trial has commenced.

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

8. The petitioner is implicated in the offences mentioned hereinabove. It is pertinent to observe that the co-accused of the petitioner namely Zakir Jaffar and Asmat Zakir Jaffar applied for bail after arrest through Criminal Miscellaneous No.884-B of 2021 which was dismissed by this Court on 23.09.2021; however, it is

trite law that every case turns on its merit, hence evidence available on record is to be examined to determine *prima facie*, the culpability of the petitioner. It is trite law that at bail stage this Court cannot delve deeper in the evidence and is to make a tentative assessment of the material available. Though the call data record placed on record shows that the petitioner was in touch with Zakir Jaffar on 19.07.2021 and even Asmat Zakir Jaffar on 20.07.2021 i.e. the date of occurrence at about 08:35 p.m. It is almost an admitted position that the occurrence took place at or about 07:00 p.m. on 20.07.2021, hence the conversation with the co-accused on 20.07.2021 can safely be said to be after the alleged offence. In the report under Section 173 Cr.P.C. filed by the Investigation Officer no overt or covert role has been attributed to the petitioner. Even in the statement under Section 161 Cr.P.C. recorded by the Investigation Officer it is stated by the petitioner that one Iftikhar (co-accused) informed him about a girl known as Noor Muqaddam stated to be in the residence. The referred facts make the case against the petitioner one of further inquiry. The fact that report under Section 173 Cr.P.C. has been filed and the trial has commenced is no bar to the grant of bail as generally refusal on the said fact is only on the basis of practice rather than any law. Reliance is placed on the case titled ***Muhammad Umar v. The State and another***

(PLD 2004 Supreme Court 477). The petitioner is a cook by profession and is resident of Mansehra, hence there is no chance of his abscondance nor he has any means to tamper the prosecution evidence or influence the trial if enlarged on bail.

9. For what has been stated above, the instant petition is allowed and the petitioner is released on bail after arrest in the above mentioned case subject to furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

(AAMER FAROOQ)
JUDGE

M.NAVEED