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

Criminal Misc. No. 317-B of 2022

Nageen Khan, etc.

Versus

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.
	27.05.2022	Mr. Sher Afzal Khan Marwat & Salah ud Din, Advocates for petitioner. Sardar Shabbir Hussain, Advocate for respondent. Mr. Shahbaz Shah, State counsel. Mr. Sajid Cheema, DSP (Legal) & Kamal Inspector.

Through the instant criminal misc., petitioners/accused persons (Nageen Khan, Jehan Zeb Khan, Mian Umair Khan & Zia Ullah Khan*)* pray for Pre-arrest bail in FIR No.392, dated 18.10.2021, under Section 365 PPC, registered with Police station Shahzad Town, Islamabad.

2. The subject FIR stood registered on the written application of respondent No.2 namely Muhammad Ammas Khan, Husband of the abductee/deceased, wherein it has been alleged that on 04.09.2021, he got married to one Sana Nageen Khan and on the very next day on 05.09.2021, relatives of his wife came and forcibly took her away. On his query, the parents of his wife informed him that she will come back soon. According to the complainant, despite lapse of many days his wife did not return and that he has strong apprehension that Nageen Khan, Jahanzeb Khan, Mian Umer, Zia and others kept her in illegal detention. The complainant also apprehended that she might be killed by the accused persons.

3. The learned counsel for the petitioner stated that the deceased was the real daughter of the applicant Nageen Khan and she never got married to the respondent No. 2; that the fake Nikah Nama was prepared by the respondent No.2 and same was declared fake during the investigation of the case; that the respondent No. 2 himself is changing stances.

As per his assertions in the application to the police authorities, he has stated that the girl was handed over to her legal heirs, whereas in his application under Section 22-A, he is stating that the girl was forcibly taken away by the petitioners; that another important aspect of the matter is that the respondent has filed application with much delay, whereas the alleged abductee has passed away prior to the registration of the instant FIR; that on 27.09.2021 police of the P.S. Warri, District Dir conducted proceeding under Section 174 Cr.P.C, wherein the alleged abductee had already passed away and the respondent claiming to be the husband of Sana Nageen (deceased) was not even aware of this fact of the matter; that the offence has not been committed within the territorial jurisdiction of this Court; that there is not an iota of evidence to substantiate the abduction or the killing of the alleged abductee by the petitioners.

The respondent with malafide intention is dragging the petitioners in the instant case; that the petitioners are respectable citizens and have joined the investigation; that nothing incriminating has come on record since the lodgment of the FIR till date against the petitioner; that the petitioners have fully cooperated with the investigating agency, while they were on their pre-arrest bail; that the offence mentioned in the FIR is not attracted towards the petitioners as the petitioners are close relative of the alleged abductee.

As per the assertions of the complainant, the abductee went out of her own sweet will with the petitioners then by any stretch of imagination, it cannot be said that the girl was abducted by the petitioners; that the alleged abductee was suffering from bipolar disease, who due to over dosage of her drugs expired on 27.09.2021; that the police had carried out inquiry under section

174 Cr.P.C and during such inquiry it was found that due to over dosage the alleged abductee has passed away. Petitioner relied upon the case law reported as ***2014 PCr.LJ 237, 2009 YLR 921, 2010 MLD 774, 2010 YLR 1948, 2008 YLR 1507, 2001 PCr.LJ 31, 2018 YLR 1800, 2003 PCr.LJ 619, 2019 PCr.LJ 569, 2017 MLD 1091.***

4. On the other hand, the learned counsel for the private respondent assisted by the State Counsel opposed the contentions raised by the counsel for the petitioners by contending that the respondent No. 2 got married to the alleged abductee on 04.09.2021 and on the very next day when they were in Islamabad, the petitioners along with their relatives came to the house of the complainant and requested that the girl be handed over to the petitioners so that they can arrange for a formal wedding, the girl will be married to the complainant in a proper manner.

The complainant and his realities tried their best to contact and get the abductee back but as the petitioners were not inclined to hand over the girl to the complainant and it was only an excuse that was forwarded by the petitioners; that it was apprehended by the complainant of the instant matter from day first that the girl will be done away with by the petitioners and this very apprehension was recorded by the complainant in all his applications filed before different forums; that the complainant at earlier approached the I.G. ICT, and the concerned police station but no heed was paid to his requests for lodgment of FIR and doing the needful.

Complainant filed an application under Section 22-A Cr.P.C whereafter directions were issued to the police authorities for registration of FIR; that the petitioners are fully involved in the abduction and killing of the deceased as the deceased was done away with while she was in the custody of the petitioners.

5. The learned counsel further added that this is an honor killing as the abductee ran away with the complainant and got married which offended the petitioners; that the petitioners have

planned a cold blooded murder of a young girl just on the pretext of saving their honor in the area. Reliance is placed upon the case laws reported as ***2016 P.Cr.LJ 732021 SCMR 518, 2003 SCMR 68, 1999 PCr.LJ 1323, 2008 MLD 450, 2004 SCMR 1373, PLD 1986 SC 347.***

6. Arguments heard, record perused.

7. Perusal of the record would reveal that the instant matter was reported to the police by the complainant on the very next day of the alleged abduction but no heed was paid to the request of the respondent, as such, he had filed an application under Section 22-A Cr.P.C on 30.09.2021 before the District & Sessions Judge/Justice of Peace, East, Islamabad, the same was allowed vide order dated 09.10.2021, resulting into lodgment of FIR No. 392 of 2021 dated 18.10.2021 P.S. Shahzad Town, Islamabad

8. It is important to note that the police while submitting their report to the Court of Additional Sessions Judge, East, Islamabad has reported as under;-

> **"During probe, it transpired that the petitioner has contracted court marriage with deceased Nageen Khan and later on the Jirga sent her to her parent at Upper Dir where she was killed. The petitioner neither submitted any verbal or written information to the police and on 27.09.2021, when she was killed and her body was present in police station Upper Dir, he was informed. The petitioner was advised to approach the concerned police station for necessary action. No cognizable offence has been found taken place within Islamabad and the occurrence took place in District Upper Dir (KPK). Upon contact with the local police of concerned police station at KPK, it revealed that police has initiated proceedings under Section 174 Cr.P.C."**

9. The bare perusal of the above portion of the report filed by the concerned SHO before the Court of learned Additional Sessions Judge, East Islamabad would reveal this fact that while filing the report it was very much in the knowledge of the concerned SHO that the girl/abductee has been killed but despite of this fact, FIR was lodged under Section 365 PPC, that also on the direction of the learned Additional Sessions Judge/Justice of peace while allowing the application filed by the complainant, which smacks malafide on the part of the police officials of the concerned police station, therefore, the S.P. investigation concerned should conduct an inquiry into this aspect of the matter.

10. The perusal of the record further reveals that the abductee was admittedly taken away by the petitioners and while in the custody of the petitioners the abductee lost her life.

11. It is settled principle that while deciding a bail petition only tentative assessment of the material collected by the prosecution is to be made while deeper appreciation is not permissible. In case the material collected during the investigation, on tentative assessment, lends support in forming opinion qua involvement of any one in the commission of alleged offence, same can be made basis not to exercise discretion in favour of an accused. The qualification of the material has been set as "*tangible*". Reliance is placed upon case of ***'Muhammad Sarfraz Ansari. v. State and others'*** (**PLD 2021 SC 738**).

12. An accused, alleged to have committed an offence, would be subject to a distinct legal regime, certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody, his release is to be regulated by the provisions of the Code Of Criminal Procedure 1898 and he has to make out a case within the statutory frame provided thereunder. Reliance is placed upon case titled as ***Abid Hussain v. Tassawar Hussain & another*** **(2021 SCMR 518)**.

13. Reliance is placed upon case law reported as ***Muhammad Ismail v. The State*** **(2022 SCMR 707),** wherein it was held that *"for effective administration of criminal justice, it was most important that prosecution was allowed a meaningful opportunity to carry out and conclude the investigative process, as apart from readily available evidence in the aftermath of an incident, it may find incriminatory material that may possibly become available pursuant to disclosures in custody."* Reliance is also placed upon case law reported as ***Ghulam Qadir v. The State*** **(2022 SCMR 750)**, wherein it was graciously held that *"even otherwise, in the absence of any apparent malafide on part of the complainant on the local police, the accused could not claim extra ordinary/equitable concession of pre-arrest bail in a criminal case*"

14. Another aspect of the matter is that while the abductee was abducted from the jurisdiction of P.S Shahzad Town, Islamabad and was done away with in the jurisdiction of P.S. Warri, Upper Dir (KPK), the police of P.S. Shahzad Town can inquire into the matter and the Courts at Islamabad have jurisdiction to try the offence as envisaged under Section 179 Cr.P.C read with section 180 & 181 (4) Cr.P.C.

SECTION 179 Cr.P.C

Section 179 contemplated cases where the act done and the consequence ensuing therefrom together constitute the offence. According to this section when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z, The offences of the culpable homicide of A may be inquired into or tried by X and Z.

15. According to this section when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

16. The bare reading of the section transpires the following pre requisites of its application into a case:-

a. This section applies when the act done and the consequences ensuing therefrom jointly constitute the offence;
b. Such offence may be inquired into or tried by a Court within the limits of whose jurisdiction any such act has been done or any such consequence has ensued.
c. This section would not apply when the act or omission is a complete offence itself, irrespective of any consequence which has ensued. Reliance is placed upon ***The State through A.N.F Gilgit v. Chidi & 7 others*** **(2007 PCr.L.J 1306)**

SECTION 180 Cr.P.C

Place of trial where act is offence by reason of relation to other offence. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

"The Section 180 Cr.P.C which is an enabling section provides for a place of trial where the act committed is an offence by reasons of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence. In such a case a charge of the first-mentioned offence may be inquired into or tried by the Court

*within the local limits of whose juridicti9on either act was done." "**(AIR 1963 Guj 234),** where by virtue of S.179 the principal offence (e.g. cheating) can be tried at either of two places x or y, the offence of abetment of such offence can also be tried at either of the above two places. **(AIR 1960 S.C. 266)."***

SECTION 181 Cr.P.C

i……..

ii…….

iii……

iv. **Kidnapping and abduction.** The offence of kidnapping or abduction may be inquired into or tried by a court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Sub Section (4) of Section 181 Cr.P.C relates to offence of kidnapping and abduction. In such a case offence may be tried or inquired into b a Court within the local limits of whose jurisdiction the victim is kidnapped or abducted or is conveyed or concealed or retained.

15. The case laws relied upon by the learned counsel for the petitioners do not extend any help to the petitioners due to having distinct facts and circumstances.

16. In view of above, petitioners have not been able to make out a case for grant of pre-arrest bail at this stage. Consequently, captioned criminal misc. is accordingly **dismissed.**

17. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//