ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Crl.Misc.No.737-B of 2013
Tasawar Nazir
Vs.
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.
	06.1.2014	Mr. Israr Ahmad Abbasi & Mian Ahmed, Advocate for petitioners. Mr. Sana Ullah Zahid, learned Deputy Attorney-General with Ghulam Habib, SI. Malik Sajjad Javed, Advocate for complainant.

This single order shall dispose of captioned Crl. Misc as well as Crl. Misc. No.765-B of 2013 as both emanate from a common FIR bearing No.73, dated 10.2.2013, registered under Sections 498,496-A, 201 PPC read with 25-D of Telegraph Act, at Police Station Industrial Area, Islamabad.

2. Earlier, bail petition of the petitioner Tassawar Nazir was turned down by learned ASJ-West, Islamabad, vide order dated 12.11.2013, whereas the case of co-petitioner [Ibrar Hussain] is somewhat distinct as initially, he was booked under Section 365-B/34 PPC, but was allowed bail by the learned ASJ-West, Islamabad vide order dated 18.3.2013. Subsequently, he was discharged by the learned Illaqa Magistrate, vide order dated 01.4.2013.

3. Again the case took a turn, when investigation was transferred to Police Station Banni Gala, Islamabad, pursuant to which petitioner Ibrar Hussain was again arrested and his second bail petition was dismissed vide order dated 12.11.2013.

4. According to prosecution, one Haji Muhammad Rahim on 10.12.2013, moved a written application with Police Station Margalla, stating therein that his wife namely, Najeeba is missing for the last four months and before leaving the house, she took away Rs.17,00,000/- cash and gold ornaments weighing 10 tolas.

5. It was further reported that in order to save his honour, the complainant remained in search of his wife quietly and now came to know that his wife had been abducted by their ex-maid namely, Isma and her husband

Ibrar Hussain. He further reported that the said two persons i.e. Isma & Ibrar had been forcing his wife for prostitution and now she is in custody of one Asad Ayaz Gondal, who called the complainant to Mandi Bahu-Din, but did not allow him to meet his wife. The complainant alleged that his wife is being used for illicit purposes.

6. Learned counsel for petitioner [Tasawar Nazir] submits that petitioner is not nominated in the FIR which was registered after the delay of four months; there was a specific explanation that SIM card of the petitioner was being used by the accused Ibrar and therefore, Section 25-D of Telegraph Act does not apply to the petitioner; that from contents of FIR, offence under Section 498 PPC, at the most, is made out and that too against the actual culprits, but the police with malafide intentions inserted Section 365-B & 496-A PPC, without any legal & admissible evidence and that the said Sections cannot be applied simultaneously.

7. Learned counsel for petitioner [Ibrar Hussain] submitted that the alleged abductee is Afghan National having dubious character and had been staying alone in different hotels. According to the learned counsel, the ingredients of the alleged Sections are not applicable, there is no eye witness of the occurrence and it is a case of no evidence. During the physical remand, no incriminating material was recovered from the possession of petitioner. The learned counsel emphasized that in the light of law set in cases titled as Dil Muhammad V. District Magistrate , Quetta [1997 P.Cr.L.J 1204] and Tariq Bashir & others V. The State [PLD 1995 Supreme Court 34], the accused cannot be arrested again in the same case in which he had already been discharged.

8. Learned Deputy Attorney-General, on the other hand, repelled the above submissions by stating that sufficient material is available against both the petitioners, which prima facie, connect them with the commission of alleged offence. It is admitted fact that the Sim Card of the petitioner [Tasawar] was used by co-accused Ibrar. It is also admitted fact that wife of one of the accused had been serving in the house of the complainant and therefore, in circumstances when the abductee is still not in the picture, release of the petitioners on bail will certainly amount to

hamper the investigation as one of their co-accused has already absconded.

9. Heard & record perused.

10. Record reveals that Ibrar Hussain was initially nominated in the case and after investigation he was discharged by the Illaqa Magistrate, but according to complainant, his wife was abducted by Ibrar Hussain and his wife, who forced her for prostitution and the abductee has not yet been recovered, therefore, at this stage, grant of a bail in a heinous offence may spoil the case regarding recovery of alleged abductee. It has been stated by co-accused [Tasawar Nazir] that his sim card was being used by Ibarar, therefore, the connection between both the accused cannot be kept out of consideration. The use of Sim Card is not possible without consent of its owner.

11. Prima facie, the role of Tasawar Nazir seems to be accomplicing the petitioner Ibrar Hussain towards the commission of offence. The sole statement of the complainant at this stage, coupled with the use of Sim Card and serving of his wife at the complainant's house cannot be ignored and due to prima facie involvement of the accused/petitioners, there does not seem to be any justified reason for extension of discretionary relief in favour of the petitioners. Resultantly, the bail petitions are dismissed.

(CHIEF JUSTICE)

M.Suhail*