

Form No: HCJD/C-121.
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 537-B/2022

Muhammad Ahsan (Ehsan)

Versus

The State & another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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20.05.2022. Mr. Shiraz Ahmed Ranjha, Advocate for the petitioner.
Ms. Khadija Ali, State Counsel.
Mian Nadeem Aziz, Advocate the complainant.
Mr. Naveed, S.I, P.S Khanna, Islamabad.

The petitioner is seeking post arrest bail in case FIR No.206, dated 26.02.2022 registered under Section 365-B/34 of Pakistan Penal Code, 1860 ("PPC") at Police Station Khanna, Islamabad.

2. Learned counsel for the petitioner stated that false allegation of abduction of complainant's daughter has been leveled against the petitioner. That the alleged abductee, Misbah Mumtaz, being *sui juris* entered into marriage contract with the petitioner by her free will and this fact was also admitted by her during recording her statements under section 164 of Cr.P.C before the learned Magistrates Gujranwala and Islamabad. That in her statements she

has categorically denied her abduction. That the petitioner is behind bars since his arrest and his further incarceration would serve no purpose. That co-accused, Abdul Ghafoor and Nagina Bibi, had been granted bail by the learned Additional Sessions Judge and the petitioner is also entitled to the same relief in view of the principle of consistency.

3. Learned counsel for the complainant submitted that the petitioner abducted complainant's minor daughter aged about 14 years and keeping in view the gravity of the offence that too fell within the prohibitory clause, the petitioner is not entitled to the concession of bail.

4. Learned State Counsel submitted that according to ossification test of the abductee, her age appears to be 17 years and six months. He however submitted that as per law laid down by the learned Lahore High Court in **Tajjalam Abbas Vs. State (2020 PCr.LJ 627)** the determination of age through ossification could vary from two to three years. The learned State opposed the grant of bail to the petitioner. She submitted that the challan against the petitioner has

been submitted on 19.04.2022 and the charge against the petitioner is yet to frame.

5. It is a settled principle that an accused is to be deemed innocent until proven guilty. The right to liberty and dignity is also protected under Articles 9 and 14 of the Constitution as is the right to a fair trial under Article 10-A. In the event that after a fair trial the accused are found to be innocent, there is no mechanism to offer restitution for their loss of liberty pending their trial. It has therefore been held by the august Supreme Court that bail cannot be denied as a punishment pending trial in **Manzoor and 4 others vs. The State (PLD 1972 SC 81)** in the following terms:

"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

6. In the instant case the abductee herself while appearing before the learned Magistrate, Gujranwala as well Islamabad recorded her statements under sections 164 of Cr.P.C and denied the allegation of her abduction leveled against the petitioner. She categorically stated that no one had abducted her and she solemnized marriage with the petitioner with her own free will. Whether or not abductee is under age and whether contracting marriage with her constitutes an offence under PPC are questions of further inquiry and the petitioner has not been charged with any such offence. There is no incriminating material on record establishing that the petitioner is liable for the offence of abduction.

7. In these facts and circumstances, the instant petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one local surety in the like amount to the satisfaction of the learned trial Court. The bail is subject to the condition that the petitioner upon being released on bail shall not try to get in touch with the abductee who is lodged in Dar-ul-

Aman, till such time that the learned trial court determines the age of the abductee and decides who is to be granted custody. A breach of this condition will be a ground for cancellation of the bail being granted.

8. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

**(BABAR SATTAR)
JUDGE**

Saeed