

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.M. (BA) No.475-D/2025.

Mudassir Abbas
Vs.
The State etc.

JUDGMENT

For Petitioner: Mr. Ghulam Asghar Khan Baloch Nar-Malang, Advocate.

For State: Mr. Ahmad Abu Hanifa Asstt: A.G.

For Respondent: Mr. Nazar Muhammad Niazi, Advocate.

Date of hearing: **17.10.2025.**

INAM ULLAH KHAN, J.- Through instant application, the petitioner Mudassir Abbas son of Niaz Hussain is seeking post-arrest bail in case FIR No.116, dated 22.8.2025, registered under Sections 376/292 PPC read with Section 21 of the Prevention of Electronic Crimes Act, 2016 of Police Station Kirri Khaisore, District D.I.Khan, as he has been declined bail by learned Additional Sessions Judge, Paharpur, D.I.Khan, vide order dated 06.10.2025.

2. Briefly stated the facts of the case, as narrated in the FIR, are that complainant Mst. Irum Hassan daughter of Zafar Hussain, reported to the local police that the petitioner is her cousin and they had developed friendly relations for past five years and

during said period the petitioner frequently visited her abode in the absence of her parents and committed zina with her under false promise of marriage and also clandestinely recorded her nude video. She further alleged that the petitioner refused to marry her and was continuously blackmailing her to upload her video on social media; and on this pretext the petitioner received Rs.150,000/- from the complainant with the commitment to delete the said video; and on refusal of the complainant to fulfill further demand of money, the petitioner shared/uploaded the video on social media.

3. I have heard arguments of learned counsel for the petitioner and the learned A.A.G., representing the State assisted by learned counsel for the complainant. Record was minutely scanned.

4. From tentative assessment of the record, it is clear that although the accused/petitioner is directly charged in the FIR for the commission of offence, however, the FIR does not mention specific date and time of the occurrence. The record further transpires that the occurrence was reported on 22.8.2025 and on said date, medical examination of the complainant was conducted by the concerned lady doctor. According to the medico legal report, age of the complainant was assessed to be 30 years. Though the Medical Officer observed commission of sexual intercourse, however, no

marks of violence were noted on body of the victim. Similarly, no tears of semen were found on her body and clothes. Needless to say, the allegation of five years friendship between the petitioner and the complainant and the medico legal report of the complainant, if placed on juxtaposition, the applicability of Section 376 PPC requires determination by the learned trial Court.

in Muhammad Aslam's case¹, the august Supreme Court of Pakistan has held that:

“Although, this is settled principle of law that in such like cases the statement of the victim itself in isolation is sufficient for proving the charge against the accused but the strict condition for this is that the same shall reflect that it is independent, unbiased and straight forward to establish the accusation against the accused. However, in the present case there are certain aspects of the matter, which need to be probed further. Allegedly the petitioner committed rape with the complainant 2/3 months prior to lodging of the FIR but no specific date and time of the alleged occurrence has been disclosed. The complainant did not utter even a single word for the delay in lodging the FIR. During medical examination of the complainant, the lady doctor found no visible redness, abrasion, bruise, laceration, tear or any other violence mark on the body of the alleged victim. Hymen was found to be old ruptured and there was no sign of bleeding”.

5. Additionally, by virtue of amendment made in the Code through Act No.XLIV of 2016, Section 164-B has been inserted whereby in cases under Sections 376, 377 or 378-B of PPC or attempt

¹ Muhammad Aslam v. The State and others (2023 SCMR 397)

thereto, the Deoxyribonucleic Acid (DNA) testing has been made mandatory, if practicable, from the victim and accused and sent to the Forensic Laboratory, however, no such exercise has been carried out to bring on record sufficient material, connecting the petitioner with the offence. In the absence of any proof as well as omission of the prosecution to conduct DNA testing, this Court in Muhammad Rahat Fareed's case², in an identical matter, while allowing bail to the petitioner has observed that:

“Moreover, in the instant case, no compliance with the provision of Section 164-B, Cr.P.C. has been made because no samples for DNA test have been obtained either from the accused/petitioner or victim despite the fact that the word “shall” is used in the said provision, making its applicability mandatory. The prosecution must keep in mind this aspect while dealing with such like offences, in the best interest of the victim as well as the accused”.

Similarly, in Muhammad Aslam's case (*supra*), it has been observed by the apex Court that:

“We have been informed that neither any DNA test nor grouping test of the semen has been conducted. In the absence of grouping test of the semen, it could not be held with certainty that the victim was subjected to zina by the petitioner especially when she is admittedly a married woman”.

6. So far as the allegation of capturing the nude video and uploading the same on social media by the accused/petitioner is concerned, the record reveals

² Muhammad Rahat Fareed v. The State and another (2023 P.Cr.L.J. Peshawar 436 [Abbotabad Bench])

that initially on 22.8.2025, during the spot inspection, a USB 16-GB, allegedly containing the video made by the petitioner was handed over to the Investigating Officer by Asif Ali, brother of the complainant, however, in the said video, the male person was not identifiable while the female was identified to be the complainant. Similarly, on 24.8.2025, a touch mobile phone was allegedly recovered on the pointation of petitioner from his house, however, the video was allegedly deleted from the same. Be that as it may, the record is silent qua sending of the USB and the mobile phone to the FSL, hence, at this stage, same cannot be relied upon for declining bail to the petitioner. Needless to say, the concerned investigating officer has not made any effort to bring on the record any documentary proof qua ownership of the mobile phone, allegedly recovered on pointation of the petitioner. In Muhammad Aslam's case (supra), it was held that:

“On our specific query as to whether the mobile from which the video and explicit pictures were made belonged to the petitioner, the learned law Officer showed his ignorance. The mobile phone/instrument has also not been sent to FSL for analysis”.

7. Be that as it may, Section 21 of the Prevention of Electronic Crimes Act, 2016 carries punishment of five years imprisonment or with fine which may extend to five million rupees or with both. In

such view of the matter, offence under the ibid section of law does not fall within restrictive clause of Section 497, Cr.P.C. and bail in such like cases is a rule and refusal thereof, an exception. In Muhammad Daniyal Farrukh Ansari's case³, it was held that:

“2. After hearing the learned counsel for the petitioner and learned Deputy Attorney General at length and perusal of available record with their assistance, it has been observed by us that offences alleged against the petitioner fall outside the prohibitory clause of section 497, Code of Criminal Procedure. Learned Deputy Attorney General has not disputed this fact. Grant of bail in such like cases is a rule and refusal an exception. No exceptional circumstances have been pointed out to refuse concession of bail to the petitioner”.

8. For the foregoing reasons, this petition is allowed and accused/ petitioner is directed to be released on bail subject to furnishing bail bonds in the sum of Rs.100,000/- (rupees one hundred thousand) with two sureties, each in the like amount, to the satisfaction of Illaqa/Duty Judicial Magistrate.

9. Above are the reasons for my short order of even date.

Announced.
Dt: 17.10.2025.

Kifayat CS*

--Sd/--
JUDGE

(S.B)
Hon'ble Mr. Justice Inam Ullah Khan

³ Muhammad Daniyal Farrukh Ansari v. The State (2021 SCMR 557)