

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.432-B/2019

Junaid Afzal
Versus
The Sate and others

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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31.07.2019	Malik Faisal Rafique, Advocate for the petitioner, Rana Shaukat, Advocate for the complainant / respondent no.3 Mr. Sadaqat Ali Jehangir, Standing Counsel along with Mian Khurran, ASI (I.O.).
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Through the instant petition, the petitioner Junaid Afzal, son of Mir Afzal, seeks pre-arrest bail in case F.I.R. No. 189/2019, dated 24.04.2019, registered under Sections 376 and 506-ii of the Pakistan Penal Code, 1860 ("P.P.C"), at Police Station Golra Sharif, Islamabad. The Petitioner's earlier pre-arrest bail petition was dismissed vide order dated 19.06.2019 passed by learned Additional Sessions Judge, Islamabad-West.

2. As per the contents of the said F.I.R., the complainant (Mst. Ghazala Noureen) is a poor widow and a mother of two children. The complainant alleges that a year earlier, she developed a relationship with the accused/petitioner who made false promises of marriage and raped her. Besides that the accused/petitioner allegedly extorted from her Rupees 2,40,000/- and Rupees 60,000/-. It was also alleged that on her demand for the return of the said amount, the accused/petitioner started extending threats

and lodged criminal cases against her which cases were cancelled; that earlier the parties reconciled the matter in the police station, but recently the accused/petitioner once again started pestering her and threatened that he would abduct her children and would kill her by running a vehicle over her.

3. Learned counsel for the petitioner submits that the F.I.R. is tainted with malafide of the complainant and the police; that allegations against the complainant do not constitute an offence under Section 376 P.P.C.; that the story of prosecution is false and improbable on the face of it; that petitioner is innocent and has been falsely implicated; that the complainant is a lady of dubious character; that the case is of no evidence; that no date and time of occurrence has been mentioned in the complaint; that there is an inordinate delay in the registration of the F.I.R.; that there are significant contradictions in complainant's statement under Section 164 Cr.P.C.; that complainant alleges the commission of sexual intercourse with her on several occasions without any resistance by her; that the forensic DNA and serology reports as well as medico legal reports contradict the prosecution's case; and that there are several legal and factual infirmities in the prosecution's version which make it a case of further inquiry. Learned counsel requested for the petition to be allowed and for the petitioner to be granted pre-arrest bail. In support of his contentions, learned

counsel for the petitioner placed reliance in the cases of “Ghulam Mohay-Ud-Din alias Bao Vs The State” (2012 P.Cr.LJ 1903 Lahore), “Muhammad Maqsood Vs The State” (PLJ 2012 Cr.C Lahore 729), “Muhammad Yamin Vs State” (2018 PCr.LJ 1326 Sindh) “Muhammad Aslam etc Vs State” (PLJ 2015 Cr.C. Lahore 162), “Muhammad Naveed Aslam Vs State” (PLJ 2017 Cr.C. Lahore 61), “Khalil Ahmed Vs State” (PLJ 2018 Cr.C Lahore 194), “Muhammad Tanvir Vs State” (2017 SCMR 366), “Tahir alias Tahira Vs The State” (PCr.LJ 123 Lahore) and “Muhammad Mansha Vs The State” (2018 SCMR 772).

4. Learned counsel for the complainant resisted the petition by submitting that the petitioner is nominated in the F.I.R; that intercourse between the accused and the complainant constitutes rape under Section 375(iv) PPC, because the complainant believed the accused/petitioner would marry her; that delay in registration of F.I.R. is not attributable to the complainant; and that the complainant initially kept quiet to save her honour; that deeper appreciation of evidence is not permissible at bail stage; that the petitioner is involved in the commission of a heinous crime; and that the offence is non-bailable and falls within the prohibitory clause of Section 497 Cr.P.C.; and that the petitioner is not entitled to the concession of bail. Learned counsel prayed for the bail petition to be dismissed.

5. Learned State Counsel, assisted by Investigation Officer, also opposed the bail

petition. However the I.O. confirms that the accused/petitioner is cooperating with the investigation.

6. I have heard the contentions of the learned counsel for the parties and perused the record.

7. It is noticed that date and time of the alleged occurrence has not been mentioned either in the F.I.R. or in the complainant's statement under Section 164 Cr.P.C. *Ex-facie* the complaint is abstract and lacks the necessary particulars about the occurrence.

8. The F.I.R. against the petitioner has been registered under Section 376 P.P.C. which provides punishment for the offence of Rape. According to definition of "Rape" provided in Section 375 P.P.C., the said offence is constituted if a man is said to have committed sexual intercourse with a woman in one of the following five circumstances:-

- (i) against her will;*
- (ii) without her consent;*
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;*
- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or*
- (v) with or without her consent when she is under sixteen years of age.*

9. As per the record, *prima facie*, at this stage none of the above constituents are available in the present case because; (i) the prosecution story in the F.I.R. does not make out the commission of the alleged crime without will or consent of the complainant; (ii) the complainant does not accuse the petitioner of putting her under threat of death

or hurt, instead she alleges that the petitioner committed sexual intercourse after promising to marry her, which promise he did not fulfill; (iii) according to her own showing, the complainant is a widow, hence it is improbable that the offence was committed by the petitioner under false pretense as her husband, within the meaning of Section 375 P.P.C. and (iv) the complainant does not claim to be of less than sixteen years in age.

10. Apparently at this stage, there is no incriminating material against the petitioner/accused except for ocular statement of the victim/complainant. The medical examination and DNA reports do not connect the accused/petitioner with the commission of alleged crime. The Hon'ble Supreme Court in case titled as "Aamir Bashir etc Vs The State" (2017 SCMR 2060), had reiterated that "*any fact which may not be sufficient to cast doubt of absolute nature on the prosecution case but equally sufficient to be considered for grant of bail, cannot be lightly ignored.*"

11. The complaint was lodged on 05.04.2019 while the F.I.R was registered on 24.04.2019, i.e. with an unexplained delay of nearly twenty days. There is delay of another day in medical examination. It appears from the contents of F.I.R. that the complainant harbours resentment against the accused/petitioner due to outstanding pecuniary claims and rival complaints. Therefore, false implication of the petitioner cannot be ruled out. The accused/petitioner is said to be cooperating with the investigation and had undergone the medical

examination.

12. In view of above *tentative* assessment of facts and circumstances, I find the petitioner entitled for the discretionary relief of pre-arrest bail. Consequently, instant petition is allowed and ad-interim pre-arrest bail granted to the petitioner, vide order dated 23.07.2019, is confirmed.

13. Learned counsel for the petitioner requested that since the petitioner is not a local resident, he would not in a position to arrange for local sureties. Consequently, the confirmation of the pre-arrest bail is subject to furnishing of cash surety in the sum of Rs.2,00,000/- with the Deputy/Additional Registrar (Judicial) of this Court.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

M.A.Baig.