

Judgment Sheet
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.403-B of 2017

YASIR KHAN, ETC.
Versus
THE STATE AND ANOTHER.

Petitioner by: **Mr. Qaisar Mehmood Awan, Advocate.**
State by: **Mr. M. Akram Gondal, Sate Counsel along
with Mr. Azhar Hussain Shah, DSP (Legal)
and Mr. Bashir, Inspector/I.O with record.**
Complainant by: **Mian Ahmed Khan, Advocate.**
Date of decision: **31.08.2017**

SHAUKAT AZIZ SIDDIQUI; J: Petitioners seek bail after arrest in case F.I.R No.163, dated 28.04.2017, offence u/s 394/376(2)/377/411 PPC, registered at Police Station Koral, Islamabad, as Petitioners' similar request has already been declined by the learned Additional Sessions Judge-VI, Islamabad (East) vide order dated 12.06.2017.

2. Facts gleaned out from the FIR are that;

The Complainant, namely Muhammad Mobeen s/o Muhammad Suleman, resident of H.No. 51, St. No. 3, VIP Ghauri Town, Islamabad, was at his native town (Kot Addu) in connection with visiting his ailing father, whereas, his family was at Islamabad, when on 18.04.2017 at about 11.00 p.m three unknown armed persons, entered his house and made his family members hostage and tied them with ropes. Accused remained in Complainant's house for about four to five hours and while leaving took cash of more than rupees 5 lacs, four mobiles and registration book of Honda

CD-70 bearing registration No., MNP-5756, with them. Accused allegedly beaten the family members; made pictures of the ladies and threatened to put the same on the social media in case information of the occurrence is given to police. During the whole episode one of the accused allegedly remained present outside the Complainant's house with whom three accused, present inside the house, were continuously in connection through phone.

Initially the FIR was registered u/s 392 PPC but during investigation it transpired that the accused committed Zina-bil-Jabr and unnatural offence with all the three ladies present at home, hence, relevant sections i.e. 394, 376(2), 377 & 411 PPC were also incorporated in the FIR.

3. Learned counsel for petitioners, *inter-alia*, submits that Petitioners have falsely been implicated in the instant case for ulterior motive and malafide intentions. Learned Counsel further submitted that the FIR has been registered after the delay of 10 days for which no explanation has been given, whereas, they were not specifically nominated in the FIR. Moreover, initially the FIR was lodged u/s 392 PPC whereas, later on offences u/s 376(2), 377 and 411 PPC have been inserted without any plausible reason. Petitioners have been nominated in the FIR without any lawful justification as neither Complainant nor anyone else has seen them at the spot rather they have nothing to do with the commission of offence as mentioned in the FIR. Furthermore, there is no evidence to connect the present Petitioners with the

commission of offence which leads the case of petitioners to one of further inquiry; and there exists no extra-ordinary circumstances to withhold the benefit of concession of bail to the Petitioners. It is contended that petitioners are previously non-convict and non record holder, no more required for further investigation and ready to furnish solvent sureties to the satisfaction of court if enlarged on bail as keeping them behind the bar for an indefinite period will serve no useful purpose. Learned Counsel in support of his contentions placed reliance on the case law reported as **Nasir Hussain Vs. The State and another (PLJ 2015 Cr.C.(Lahore)343)**, **Muhammad Imran Vs. The Sate and others (2014 P.Cr.L.J (Lahore)456)**, **Nazar Hussain Vs. The State and others (2014 P.C.r.L.J. (Lahore)435)**, **Waqar Shah Vs. The State (2012 P.Cr.L.J. (Lahore) 866)**, **Muhammad Afzal alias Abdullah and others Vs. The State and others (2009 SCMR 436)** and **Muhammad Yameen alias Raja Vs. The State and others (2009 SCMR 84)**.

4. On the other hand, the learned State Counsel as well as learned counsel for the Complainant while opposing the bail petition, *inter-alia*, contended that the Petitioners have duly been identified during the identification parade with a specific role which is very heinous and unethical. Moreover, there is sufficient evidence available on record to connect them with the offences alleged in the FIR. It is further stated that statements of the ladies (victims) recorded u/s 164

Cr.P.C. paint such a horrible picture that each accused proved himself ruffian and criminal of highest order. They not only committed Zina-bil-Jabar as gang but prepared videos/movies of respectable ladies in naked condition during the forcible act of rape, through their mobile phone, thus, they are not entitled for concession of bail. Learned Counsel for Complainant in support referred case law reported as **Muhammad Suleman alias DAGAI Vs. The State and another (2017 P.Cr.L.J. Note 27)**, **Waseem Bashir Vs. The State and others (2016 P.Cr.L.J. 454)**, **Nasreen Bibi Vs. Farrukh Shahzad and another (2015 SCMR 825)**, **Salman Vs. The State (2014 P.Cr.L.J. 641)**, **Rasheed Ahmed Vs. The State (2010 P.Cr. L.J. 398)**, **Arif Ali Ansar and another Vs. The State (2010 YLR 2019)**, **Zahir Muhammad Vs. The State and another (2008 YLR 837)**, **Sarfraz Alias Sarwar s. The State (1992 P.Cr.L.J. 555)** and **Ali Gohar Vs. The State (1989 P.Cr.L.J. 24)**,

5. I have heard the learned counsel for parties and have also perused the available record.

6. No doubt, Petitioners were not specifically nominated in the FIR as in such like cases, it cannot be, due to unknown identity of accused persons, however, in the instant matter they have duly been identified by the victim ladies at the time of identification parade and that too with a specific role of committing Zina-bil-Jabar, un-natural offence

and preparation of movies of the act committed upon the said ladies. Moreover, parties are not previously known to each other thus no question of either enmity or any kind of malice or malafide to give even a hint of false implication of Petitioners arises. Another aspect which is of great importance is that in such like cases, it could not be believed that victim ladies would put their personal respect, character and family honour at stake by fabricating a false story, so as to stigmatize themselves for the rest of their lives.

7. As far as delay of ten days in lodging of FIR is concerned, it is well explained by the Complainant. Moreover, it is important to observe that in the cases like in hand, delay in lodging the FIR is not that much material as victims normally avoid approaching the Police due to family honour and without permission of male family elder. In the instant matter threat of making the videos viral, prepared by accused persons during the commission of offence was also apparent. It is matter of common knowledge that fear of being blackmailed is not less than a trauma. Reference in this regard may usefully be made to the case law reported as **Nasreen Bibi Vs. Farrukh Shahzad and another (2015 SCMR 825)**. Accused persons remained at the place of occurrence for about six hours, committed gang rape, committed dacoity and prepared naked movies, all on gun point. During this period they used house articles and food items available at the house of victim ladies. Series of offences committed by accused persons right from forcibly

entering into the house of Complainant and leaving with articles, *prima-facie*, shows their criminal intent and execution of the same.

8. Besides this all the offences, except u/s 411 fall within the prohibitory clause of Section 497 Cr.P.C and in cases involving capital punishment or imprisonment for life or for ten years, bail cannot be granted unless the Court first comes to the conclusion that there are no reasonable grounds to believe that the accused has committed the alleged offence, whereas, in the instant case victim ladies have fully implicated the accused in commission of offence which is duly supported by the medical evidence and recoveries already effected, however, deeper appreciation of evidence is not to be made at the bail stage, apparently, material available on the record connect them with the commission of offence.

9. The case law relied by the learned Counsel for Petitioners has no relevancy or application so far as the facts and circumstances of this case are concerned and it is settled proposition of law that each criminal case is to be decided on its own facts and merits, there is no universal rule of application which can be applied to every case as facts and circumstances of each case will determine its fate.

10. Before parting with the order it is important to point out that the role of the Investigation officer namely Muhammad Tahseen, S.I. throughout the investigation

remained very callous, irresponsible and dubious as he investigated the matter very poorly leaving many loop holes apparently to give favour to the accused/Petitioners e.g. the last worn clothes of victim ladies were not taken into custody and sent to NFSL for analysis; victim ladies were not sent for medical examination timely and recoveries were not shown to be effected from the possession of accused/petitioners rather from their relatives. It is also apparent from the record that the said Police Official instead of doing his job vigilantly kept on pressurizing the Complainant as well as victim ladies to make a settlement with the accused/Petitioners and to step back from persuading the case. It is observed with great concern that this sort of negligence on the part of Investigator in such a heinous crime and cruel act should not go unnoticed by senior Police Officers. It is indeed the duty of an Investigator to collect best possible evidence when it is in fact available which is not being done in the present case. Videos prepared by accused persons of the ladies, is the most important material for the trial as well as to protect victim ladies from being blackmailed at the hands of accused persons. The office is directed to send a copy of this judgment to the Inspector-General of Police, Islamabad, to assess for himself whether investigation in such heinous and rare cases should be entrusted to officers like Muhammad Tahseen, S.I. It is a case of culpable neglect and indifference on the part of Investigating Agency that an untrained junior rank Police Officer was asked to investigate such a case when the high ups should have been vigilant and watchful of the gravity of the offence committed in their jurisdiction. Moreover, with such dishonest investigation and

lack of assistance from the Police it becomes difficult for the Courts to do justice. It is also directed that the outcome of the inquiry initiated against the said police official should also be intimated to this Court through Registrar.

11. For what has been discussed above, this Court is not inclined to allow this petition. Hence, post arrest bail is declined.

12. All the observations made hereinabove are tentative in nature and shall not affect the merit of the case.

(SHAUKAT VAZIZ SIDDIQUI)
Judge

Approved for Reporting.

Blue Slip Added

Adnan/*

Uploaded By : Engr. Umer Rasheed Dar