

HCJD/C-121  
**ORDER SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**CRL. MISC. NO. 891-B of 2020.**

**Fakhir Akram.**

*VERSUS*

**The State, etc**

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.08.2020. Rao Muhammad Sarfraz, Advocate alongwith the petitioner.  
Mr Masood Ahmed, Advocate for the complainant.  
Mr Sohail Khurshid State Counsel.  
Mr Mumtaz, SI with record.

The petitioner Fakhir Akram son of Muhammad Akram has sought pre-arrest bail in case, F.I.R. No. 390, dated 07.07.2020, registered under sections 377 and 377-B of the Pakistan Penal Code 1860 (hereinafter referred to as "**PPC**") at Police Station Golra Sharif, Islamabad.

2. The brief facts, as narrated in the FIR, are that on 18.06.2020, the present petitioner took the son of the complainant to a Flat situated at E-11 Markaz, where other co-accused committed the offence of sodomy and had subjected the victim to physical torture. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the instant FIR is concocted and baseless; allegations levelled against the petitioner are false, frivolous and vexatious; the petitioner is innocent and

has not committed the alleged offences; the petitioner has been falsely involved in the instant case with ulterior motives; the petitioner has no criminal record; the petitioner is a minor and his case falls within the ambit of Juvenile Justice System Ordinance, 2000; no specific role has been attributed to the petitioner; the petitioner has been nominated in the instant case just to harass and humiliate him; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; story as narrated in the FIR is false, fictitious and concocted; there is no eye witness of the alleged occurrence; there is delay of nineteen days in registration of the FIR, which makes it a case of further inquiry; the petitioner has been implicated in the instant case with malafide intention and ulterior motives; there is no direct or indirect evidence against the petitioner regarding the alleged commission of offence; hence prayed for confirmation of his pre-arrest bail granted vide order, dated 10.08.2020.

4. The learned State Counsel assisted by the learned counsel for the complainant has appeared alongwith Mumtaz, SI. They have opposed the grant of bail. They have argued that; the petitioner is specifically nominated in the FIR; the petitioner has committed a heinous offence and therefore, does not deserve the concession of bail; there is no delay in registration of the FIR; offences fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner does not deserve any leniency, hence prayed for dismissal of the instant bail petition. The learned counsel for the complainant has placed reliance on the cases titled "*Irfan Ali Sher vs. The State*" [PLD 2020 S.C. 295] and "*Naeem Khan vs. The State and 02 others*" [PLD 2004 Peshawar 70].

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The present petitioner has been nominated in the FIR and specific role has been attributed to him. The offences fall within the ambit of prohibitory clause of section 497 Cr.P.C. The petitioner, prima facie, appears to be involved in commission of the offences. This Court is satisfied that, prima facie, there is sufficient incriminating material against the petitioner on record so as to decline bail. There is nothing on record to show that the complainant had any enmity or has any reason to falsely implicate the petitioner. Likewise no malafide appears on part of the prosecution. It is settled law that principles governing 'pre-arrest bail' are different from that of 'post-arrest bail'. Deeper appreciation of available record/evidence is not admissible at this stage. Moreover, the ingredients of pre-arrest bail are distinguishable than post arrest bail. Nothing has been placed on record to show that the case was outcome of an enmity or that the criminal case has been registered to merely humiliate the petitioner. The petitioner has not been able to make out a case in his favour within the parameters laid down for the purposes of granting pre-arrest bail. Moreover, there is no evidence on record to show that the police or the complainant has registered the case due to malafide or malice. This Court is guided by the law laid down by the august Supreme Court in cases of "*Murad Khan versus Fazal-e-Subhan and another*" [PLD 1983 Supreme Court 82], "*Meeran Bux versus The State and another*" [PLD 1989 Supreme Court 347] and "*Ajmal Khan versus Liaqat Hayat and another*" [PLD 1998 Supreme Court 97]. The petitioner has not been able to make out a case within the parameters laid down in the

aforementioned judgments for extending the discretionary relief of grant of anticipatory bail.

7. In the circumstances this Court is of the opinion that the petitioner is not entitled to the grant of anticipatory bail at this stage and consequently the pre-arrest ad-interim bail already granted in favour of the petitioner is ***recalled / dismissed.***

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

**CHIEF JUSTICE**

*Asad K/\**

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