

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 128-B/2020
Zahoor Ahmed
Vs
The State etc

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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03.03.2020	Mr. Raza Ali Shah, Advocate for petitioner. Mr. Tahir Hameed Khan, State Counsel. Ch. Gulfam Ashraf Goraya, Advocate for respondent No.2/complainant. Zafar Iqbal ASI with record.
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This is post-arrest bail petition by accused/petitioner {Zahoor Ahmed} in case FIR No.296 dated 15.09.2019, under Sections 377, 506(ii)/34 PPC, Police Station Lohi Bher, Islamabad.

2. The record appended with the petition reveals that earlier bail petition was rejected by the learned Additional Sessions Judge, Islamabad-East vide order dated 03.02.2020.

3. Learned counsel for the petitioner contends that petitioner retains no previous criminal record; there is seven days delay in lodging the FIR; DNA report has not yet been submitted; there is conflict between oral statements and the MLR, therefore, case being of further inquiry, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case law reported as 2017 PCr.LJ 1623, 1988 Cr.LJ 1925, 2014 MLD 190 [Lahore], 2018 YLR Note 114 [Peshawar], 2019 YLR 1470, 2003 YLR 2832.

4. On the other hand, learned State Counsel assisted by learned counsel for respondent No.2/complainant states that

petitioner is duly nominated with specific role; no motive has been alleged by the complainant; medical report confirms that petitioner was fit for the purpose of said offence; that accused/ petitioner is aged about 21 years while the victim is just fifteen years old.

5. Arguments heard, record perused.

6. According to the allegations as per FIR, petitioner alongwith co-accused committed sodomy with Fahad Ali, aged 15 years son of the complainant from 07.09.2019 to 14.09.2019, within the area of Jinah Garden, Islamabad by putting him in fear of death.

7. When record examined, it reveals that real mother of the victim is the complainant in the case and assertion of learned counsel for the petitioner that *malafide* is on the part of complainant to implicate the petitioner falsely, in the circumstances of the offence, seems of no significance because it cannot be imagine that a mother would use her own real son, aged fifteen years, for false implication of petitioner and that too without any reason.

8. The assertion of learned counsel regarding false implication is of no help to the petitioner particularly in the light of case law reported as 2016 PCr.LJ 454 wherein, it is held that:-

“The FIR has been lodged by the father of the victim aged about 5/6 years with utmost promptitude, wherein, the accused/petitioner is directly charged for the despicable act, which becomes more abhorable when seen in light of the fact that a minor child of 5/6 years has been subjected to the alleged act by the Qari/accused/petitioner who was employed to teach Holy Quran to the victim, a student of prep class.”

9. As for as reliance of learned counsel on the case law reported as 2017 PCr.LJ 1623, 1988 Cr.LJ 1925, 2014 MLD 190 [Lahore], 2018 YLR Note 114 [Peshawar], 2019 YLR 1470, 2003 YLR 2832 is concerned, it is settled proposition of law that every criminal case is to be decided in its own peculiar facts and circumstances. The case law relied upon entail distinct facts and circumstances, therefore are not attracted in the present situation.

10. The alleged offence falls within the ambit of prohibitory clause being a heinous crime. It is an offence against the society and should be dealt with iron hands. The ground that in absence of DNA report, petitioner's case calls for further inquiry is devoid of force in the light of case law reported as *2018 YLR Note 105 Hasham Jamal. Vs. State.*

11. It is an admitted position that challan of the case has already been submitted before the learned Trial Court, charge has been framed and now the case is set for recording of evidence and in the light of case law reported as *Rehmatullah. Vs State {2011 SCMR 1332}*, the courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation, would be to direct the trial court to conclude the trial of the case within a specific period.

12. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is dismissed. The I.O. is however directed to collect DNA report from the concerned agency and submit the same before

the learned Trial Court without further delay. The learned Trial Court is directed to conclude the trial as directed by the learned Additional Sessions Judge-V Islamabad-East vide order dated 03.02.2020.

13. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail