

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

Criminal Misc. No. 930-B/ 2020
Ghulam Qadir
Versus
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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15.09.2020	Petitioner Ghulam Qadir alongwith Mr. Shahid Akbar Abbasi, Advocate. Syed Shahbaz Shah, State Counsel, Mr Muhammad Inam, Advocate for complainant, Zahid Hussain Shah SI with record.
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Through the instant petition, petitioner (*Ghulam Qadir*) has prayed for pre-arrest bail in F.I.R No 280, dated 10.06.2020, under Section 376 PPC, Police Station Bharakahu, Islamabad.

2. Briefly, allegations set-forth in the F.I.R lodged by respondent No.2 are that the her nephew/petitioner took her daughter Mst. Zeenat Bibi at a Form House at Baigwal, Bhara Kahu, Islamabad on the pretext to provide her a job of maid on 01.01.2020 and when her daughter came back on 23.05.2020, informed that petitioner had been committing Zina with her for 4-5 months; that during the said period, she kept Mst. Zeenat Bibi confined in a room; that she became pregnant but the petitioner got aborted the child and that during the absence of her daughter, she had been inquiring from Ghulam Qadir but the latter did not pay any heed to her complaint.

3. Learned counsel for the petitioner contends that the petitioner is innocent; that the

victim is wife of the petitioner, with whom he contracted marriage on 10.01.2020 with the consent of her father and other relatives, who sworn affidavits in this respect; that the very registration of the instant F.I.R is result of family rift inter-se father and mother of the victim; that the police found the petitioner innocent; that petitioner had already filed suit for restitution of conjugal rights against the alleged victim and that in presence of malice and malafide on the part of the complainant, petitioner is entitled to the concession of pre-arrest bail.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant contends that the petitioner is specifically nominated in the F.I.R: that there is no proof of the alleged marriage; that the victim in her statement specifically implicated the petitioner to have kept her in illegal confinement for five months and committed zina with her; that the offence alleged is heinous and falls within the ambit of prohibitory clause, therefore, in absence of malafide on the part of complainant or police extra-ordinary concession of pre-arrest bail cannot be extended to the petitioner.

5. Arguments heard, record perused.

6. Perusal of record reveals that the parties are closely related with each other as petitioner and the victim are real cousins. The petitioner has consistently claimed himself to be the husband of the victim pursuant to a Shari

Nikah that solemnized on 10.01.2020 against consideration/Maher of Rs. 5,000/-.

It is also a matter of record that during investigation not only father of the victim namely Muhammad Yaqoob but paternal aunt Mariam Bibi, paternal uncle Noor Alam and other witnesses Nasreen Bibi, Asad Munir, Imad Muni, Imran Khan, and Ghulam Rabbani sworn affidavits testifying the factum of Nikah of the petitioner with the victim on 10.01.2020 against dower consideration of Rs. 5,000/-.

7. In addition, it also emerged during investigation that on 01.01.2020 the victim with the consent of her father went to the Naval Form House for having job; subsequently, the petitioner contracted marriage with the victim in presence of witnesses that includes their uncles and aunts; that father of the victim gave her hand in the hand of petitioner with her consent and that on coming to know about the said marriage, the owner of the house where she had been working, also gifted her certain household articles. Further, the victim had been working at the house of one Dr. Ambreen in Sector F-10 during the month of Ramdan and that no incriminating material had come on record to support the allegation of zina as alleged by the victim.

8. The above facts, prima facie, makes the case of the petitioner one of further inquiry and fit for exercise of extra-ordinary discretion of pre-arrest bail.

9. Moreover, There is no denial of the fact that the complainant, who is real mother of the victim, has strained relations with her husband Muhammad Yaqoob, thus element of malice or malafide cannot be ruled out particularly when the witnesses including the father of the victim had sworn affidavits to support the version of the petitioner regarding marriage which, otherwise, is also apparent as the petitioner has moved the learned Family Court through a suit for restitution of conjugal rights.

10. The another aspect of the matter is that the victim had allegedly been away from the house for about five months but the complainant despite having knowledge that the victim has gone with the petitioner, did not move the police with any complaint about her missing, which, prima facie, reflect foul attitude of the complainant. The Hon'ble Sindh High Court in "**Akhtar Ahmad and another V. The State**" (2018 **P.Cr.L.J. Note-2**) extended concession of pre-arrest bail in offence under Section 376 PPC where the victim remained quiet for noticeable period of 4-5 months as in the present case there is an allegation that she was kept in illegal confinement for about 5 months by the petitioner, while during investigation it emerged that during the said period the victim had been working at a house in Sector F-10, and the petitioner used to pick and drop her, therefore, the allegation of illegal confinement, apparently is non existent.

11. Moreover, police also concluded that no tangible evidence has come on record against the petitioner and in such eventuality when the accused was found to have not been involved in the commission of offence, case of the accused would become one of further inquiry in this score too, particularly when the other factors highlighted above lend support to his defence plea. Reliance is placed upon "*Naqi Hussain Shah V. the State*" (1992 SCMR 600) wherein the Hon'ble Apex Court extended concession of pre-arrest bail in offence under section 376 PPC where accused was found innocent during police investigation by observing that in such circumstances the case is one of further inquiry.

12. Consequently, the instant bail petition is allowed. Ad-interim bail granted to the petitioner (Ghulam Qadir) vide order dated 24.08.2020 is confirmed subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

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

A.R. Ansari