

Form No: HCJD/C-121.

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

**Criminal Miscellaneous No.684/B of 2019**

**Jamali Khkan  
VS  
The State and another.**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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<b>18.12.2019.</b>	<b>Mirza Muhammad Nazakat Baig, Advocate for the petitioner. Mr. Imran Feroz Malik, Advocate for respondent No.2/Complainant. Mr. Awais Haider Malik, learned State Counsel. Nawab Khan, S.I. Arshad Inspector.</b>
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Through the instant bail application, the petitioner Jamali Khan son of Wala Jan, seeks bail after arrest in case F.I.R. No.230/2019, dated 28.05.2019, for offence under sections 377 and 337-F(ii) P.P.C., Police Station Tarnol, Islamabad.

2. The case of the prosecution against the petitioner is that on the complaint of respondent No.2, the F.I.R., in question, was registered. It has been alleged in the F.I.R. that the accused/petitioner sodomized the son of the complainant, who is aged about 11 years.

3. The petitioner applied for bail after arrest, which was dismissed by the learned

Judicial Magistrate-West, Islamabad on 05.08.2019. Bail application of the petitioner was also dismissed by the learned Additional Sessions Judge-West, Islamabad, vide order dated 21.08.2019, hence the petition.

4. Learned counsel for the petitioner, *inter-alia*, contended that the DNA report is in the negative; that investigation stands concluded since long and even report under Section 173 Cr.P.C has been filed but the commencement of the trial is being delayed due to lack of creation of the Juvenile Court by the Government. It was also submitted that since the petitioner is a juvenile, the investigation was to be conducted by the prescribed officer, which is not the case, hence the entire proceedings are without lawful authority. It was also submitted that the case against the petitioner is one of further inquiry as there is no eye witness.

5. Learned State Counsel alongwith the counsel for the complainant/ respondent No.2, *inter-alia*, contended that the initial medical report suggests that the offence of sodomy has been committed; that the petitioner has been specifically nominated by the victim namely son of the complainant; that the notification has been issued; that

there is no impediment in the commencement of the trial; that in the investigation, the petitioner has been found guilty.

6. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. The petitioner is imputed with offences under sections 377 and 337-F(ii) P.P.C. The former offence falls in prohibitory clause and is regarded as a heinous offence. Though, the DNA report is in the negative as no semen was found in the swab, however, the initial medical report suggests that the unnatural act of sodomy had been committed with the accused. The petitioner is specifically nominated by the victim, who is 11 years old, hence is of sensible age.

8. The petitioner is a juvenile for the purposes of Juvenile Justice System Act, 2018 and has to be tried in the Court notified by the Federal Government. The Federal Government had not notified the Court and the matter was taken up during the pendency of the instant bail application, whereupon the Law Secretary was also called and he made a statement that the needful shall be done; accordingly the Federal Government issued notification

regarding creation of Juvenile Courts in Islamabad Capital Territory on 12.12.2019. The petitioner according to medical report is around 16 years of age; he has remedy of bail under sections 6(4) and 6(5) of Juvenile Justice System Act, 2018. It is appropriate that the petitioner avails the remedy under the referred provisions as the Court has now been notified.

9. For the above reasons, the instant petition is **dismissed**. However, the learned Trial Court is directed to conclude the trial within a period of two (02) months from the date of this order.

**(AAMER FAROOQ)**  
**JUDGE**

M. Zaheer Janjua