

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

Crl. Misc. No.777-B-2019

Zeeshan Tahir

V.

The State & Another

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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20.01.2020 Raja Rizwan Abbasi, Advocate for
petitioner.
Mr. Zahid Asif Chaudhry, Advocate for
complainant.
Mr. Awais Haider Malik, State Counsel
with Khalid Awan, SI.

The petitioner, Zeeshan Tahir s/o
Tahir Masood, seeks bail after arrest in
case FIR No.358 dated 17.09.2019 for
offence under section 376(ii) PPC
registered at P.S. Sehala, Islamabad.

2. The case of the prosecution, against
the petitioner, is that on complaint of
respondent No.2, the petitioner was booked
in the above mentioned FIR, wherein it has
been alleged that petitioner, along with his
accomplice, committed offence of rape with
minor daughter of complainant namely
Haya Ali.

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

Additional Sessions Judge, Islamabad-West
vide order dated 07.12.2019.

4. Learned counsel for the petitioner, *inter alia*, contended that there is a delay of about more than a month in registration of FIR; that there is no explanation for delay in registration of FIR; that DNA analysis of semen is still awaited; that in the medical examination, date of alleged occurrence is vague; that there are no violence marks or laceration or bleeding. It was submitted that it was alleged during investigation that victim became pregnant which was aborted but there is no medical report indicating that she was taken to any medical doctor for the same. It was contended that under facts and circumstances the case against the petitioner is one of further inquiry.

5. Learned State Counsel along with learned counsel for the complainant, *inter alia*, contended that delay in lodging of FIR was due to family considerations to protect honor; that offence was committed by the petitioner; that weapon of offence i.e. pistol

nominated with specific role; that delay in such like cases is immaterial. Reliance was placed on Mukhtiar Ali v. The State (2018 YLR 1743), Zahid Iqbal v. The State (2009 YLR 356), Nasreen Bibi v. Farrukh Shahzad (2015 SCMR 825), Rashad v. The State (2002 SCMR 1329) and Mst. Yasmin Butt v. Majid Baig (2008 SCMR 1602).

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

7. The petitioner is imputed for the offence mentioned hereinabove.

8. Admittedly, there is a delay of more than a month in lodging of above FIR, for which, there is no explanation.

9. The physical examination of the victim was conducted belatedly on 17.09.2019, in which, date of assault has been mentioned as 13/14 of August, 2019. The report also indicates that hymen rupture was old and there is no bleeding or laceration in the vaginal area.

10. The sample was taken for DNA analysis however as per the investigation agency, result is awaited.

11. The above facts make the case against the petitioner one of further inquiry.

12. Even-otherwise, case law relied upon by learned counsel for the petitioner is instructive inasmuch as in case reported as 'Parvaiz and another Vs. The State and another' (2014 P.Cr.LJ 599), the Hon'ble Lahore High Court observed that where semen found on vaginal swabs of the victim would lose its evidentiary value. Similar view was taken in a cases reported as 'Mukhtar Ahmad Vs. The State and another' (2012 YLR 2228) and Shahnaz Bibi Vs. The State (1997 MLD 1333).

13. Even otherwise, investigation stands completed and the petitioner is no longer required for the same.

14. As noted above that there is no justification for delay in lodging of FIR. The cases, like the present one, are based primarily on circumstantial evidence and

that too, medical. The delay in registration of FIR loses efficacy of evidence. Though there is some case law relied upon by learned counsel for the complainant that delay is inconsequential but the recent trend of judgments of the Honourable Supreme Court is otherwise. Reliance is placed on Haibat Khan Vs. The State (2016 SCMR 2176) and Muhammad Tanvir Vs. The State (2017 SCMR 366). Moreover, the Honourable Supreme Court in case reported as Manzoor Vs. The State (PLD 1972 SC 81) observed as follows:

“It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an

innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.”

15. For the above reasons, instant petition is allowed and the petitioner is enlarged on bail after arrest, subject to furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of learned trial court.

16. It is clarified that any observation, made hereinabove, is tentative in nature and shall not prejudice learned trial court during the trial.

(AAMER FAROOQ)
JUDGE

Zawar