

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

Criminal Misc. No. 100-B/ 2020
Zohaib alias Shani
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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25.02.2020	<p>Raja Faisal Younas, Advocate for petitioner. Mr. Tahir Hameed Khan, learned State Counsel with Khalid Mehmood I.O. and Muhammad Azam ASI P.S. Koral. Mr. Taqi Hussain, Advocate for respondent No.2/ complainant.</p>
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This is post-arrest bail petition by accused/ petitioner {Zohaib alias Shani} in case FIR No.372 dated 20.08.2019, under Section 377 PPC, Police Station Koral, Islamabad.

2. The record appended with the petition reveals that earlier bail petitions were rejected by the learned Judicial Magistrate and by the learned Sessions Judge, Islamabad-East twice vide orders dated 03.09.2019, 14.09.2019, 03.01.2020 & 28.01.2020 respectively.

3. Learned counsel for the petitioner contends that father of the victim entered into compromise with the petitioner; although afterwards he retracted from the same but this fact constitutes the element of further inquiry; refers to report of Forensic Science Laboratory -FSL wherein it is concluded that no seminal material was found on items No.1&2; therefore, no further DNA analysis (short tandem repeat profiling) was conducted on the items.

Further contends that there is a delay of about six hours in reporting the matter to the police which supports the allegation of

premeditation and concoction therefore, case being further inquiry, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case law reported as 1998 PCr.LJ 38, 2018 YLR 114 & 2016 SCMR 1399.

4. On the other hand, learned State Counsel assisted by learned counsel for respondent No.2/complainant states that report of FSL shows negligence on the part of prosecution/police as sample was collected on 20th August 2019 and sent to the Laboratory on 29th of August 2019 after the delay of nine days which diminishes the value of report; further states that victim is four years old child against whom this barbaric act has been committed; that under Child Protection Act, 2018 the alleged offence is neither compoundable nor bailable, therefore petition may be dismissed.

5. Arguments heard, record perused.

6. According to the allegations, set-forth in the FIR, on 20.08.2019 at about 05:30 pm, within the area of Saidran Chowk Tarlai Kalan, petitioner subjected Ismail Shah aged four years, son of the complainant, to sodomy.

7. When record examined, it reveals that real father 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 father would use his own real son, aged four years, for false implication of petitioner and that too without any reason.

8. As for as reliance of learned counsel on the case law reported as 1998 PCr.LJ 38 is concerned, although in the referred case law the offence was of section 377 PPC but the facts were different. In the second referred citation 2016 SCMR 1399, there was delay of eight days in lodging of FIR while in case reported as 2018 YLR (Note) 114, facts were distinct. It is settled proposition of law that every criminal case is to be decided in its own peculiar facts and circumstances, therefore, the referred case laws are not attracted in the present situation.

9. The argument of learned counsel that an affidavit was executed by father of the victim regarding compromise has no force because offence mentioned in the FIR, in which petitioner is duly nominated, is not compoundable and even a father cannot enter into compromise regarding the rights of his child whose body was victim of barbaric offence. The alleged offence falls within the ambit of prohibitory clause being a heinous crime. It is an offence against society and should be dealt with iron hands.

10. The assertion of learned counsel regarding FSL report being negative is of no help to the petitioner particularly in the light of case law reported as 2016 P Cr.LJ 454 wherein it is held that:-

"6. Apart from the fact that no parents would bring such a nasty charge about their minor child when there is not even a distant suggestion to impute mala fide to the parents of the child of very tender age, the eye-witness account of mother of the victim, corroborated by the two persons

mentioned in the FIR in their statements under section 161, Cr.P.C., together with medical report showing redness around anal canal and the mucosal tear (extensive) about 4 x 5 cm at 2-4 O'clock position-1 cm from anal verge, is too overwhelming evidence on the available record to prima facie connect the accused/petitioner with the commission of the offence. In the circumstances, the negative report of FSL would have no significance, more so, when there is no allegation of penetration and ejaculation. {2000 PCr.LJ 313 (Karachi), 2007 SCMR 698, 2009 PCr.LJ 978 (Peshawar) and 2000 PCr.LJ 33 (Lahore)}."

11. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is dismissed. The learned Trial Court shall conclude the trial preferably within three months.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

Suhail