

ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl.Misc.No.142-B/2020

Zubair Bangash

VERSUS

The State etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
	24.3.2020.	Raja Faisal Younas, Advocate for Petitioner. Syed Saqib Ali, Advocate for Complainant. Muhammad Ali Shah, ASI PS Shahzad Town, Islamabad.

Through this Criminal Miscellaneous application, the Petitioner has prayed for his post arrest bail in Case FIR No.310 dated 07.12.2019 under Section 376, 292 PPC registered at Police Station Shahzad Town, Islamabad.

2. The brief facts referred in the instant FIR are that complainant is presently residing with her five years son after divorce from her husband in the area of Ali Pur whereas present petitioner is continuously harassing her on her mobile phone number and six days ago Petitioner entered in her house and committed zina with her and also made video and threatened her to kill her minor son.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that instant FIR has been lodged after delay of 12 days of alleged occurrence; that there is no medical evidence on record to justify that any zina has been committed with the complainant; that investigation has been completed and challan has already been submitted in the Court; that Petitioner is behind the bars since his arrest i.e 07.12.2019.

4. Learned counsel for the complainant contends that petitioner is a habitual criminal person who used to harass and blackmail the different women after preparing their indecent

pictures and videos and has committed zina with the complainant by force.

5. Learned State Counsel contends that petitioner is habitual offender and challan has been submitted in the Court, therefore, he is not entitled for concession of post arrest bail, however, direction may be issued for early conclusion of the trial.

6. Arguments heard. Record perused.

7. Perusal of record reveals that petitioner has been arrested in case FIR No.310 dated 07.12.2019 under Sections 376/292 PPC registered at Police Station Shahzad Town, Islamabad for the allegation that he committed zina with the complainant and also prepared the video of complainant. The tentative assessment of record reflects that instant FIR has been lodged after 12 days of the incident and even FIR itself reveals that complainant has lodged the FIR after delay of six days. The challan was submitted in the Court on 14.2.2020 which is without any forensic analysis report/DNA report of the swabs, therefore, vide order dated 19.3.2020 of this Court original report has been produced by the Investigating Officer of this case which is negative.

8. The 2nd allegation in the instant case is relating to possession of photographs and making video of complainant which were recovered from the mobile phone data of the petitioner when he was arrested is yet to be established. No forensic report has been obtained by the I.O from the record of mobile phone as to whether the photographs were prepared by Petitioner rather I.O himself got printed the photographs and attach the same with challan. Although I.O admitted this fact that there is no photograph of Petitioner in the said data, therefore, the evidentiary value of the documents could only be considered by the trial Court only, which could not be considered at this stage. Even otherwise the other offence with which Petitioner has been charged is Section 292 PPC

which relates to sale and possession of obscene pictures or photograph and maximum sentence for the said offence in that offence is three months which is bailable.

9. While considering the above back ground question relating to delay in lodging the FIR in case of rape has serious repercussion and even the MLR is silent qua any mark of violence. At this stage tentative assessment of the record leans in favour of Petitioner. There is no legal justification placed on record by the I.O that as to why swabs have been dispatched with delay although the report is negative. All these established facts make the case of petitioner that of further inquiry under section 497(2) Cr.P.C. The challan has been submitted in the Court on 14.2.2020 and trial is not insight whereas petitioner is behind the bars since his arrest and no fruitful purpose would be achieved by detaining the petitioner behind the bars.

10. While considering the above position petitioner is entitled for post arrest bail, therefore, instant post arrest bail application is allowed and petitioner is admitted to post arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

11. Before parting with this order it is necessary to pass a direction to the S.P Investigation to look into the affairs of the investigation whereby the swabs were retained by the I.O in the Police Station and transmitted the same to the Pakistan Forensic Science Agency, Lahore on 06.01.2020 and no legal justification has been placed on record for such delay. The I.O has stated before this Court that not a single video or a photograph of the complainant has been recovered in this case rather photograph and

videos recovered from the mobile phone of the Petitioner were of the other women who are not witnesses in this case.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI