

ORDER SHEET.

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

Criminal Misc. No. 155/B/2020.

Muhammad Ashraf

Versus

The State.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.03.2020.	Mr. Sohail Akbar Ch., Advocate for petitioner. Barrister Ayesha Siddique Khan, State Counsel. Fakhar Abbas, S.I, P.S. Koral, Islamabad.

Through this CrI. Misc. petition, the petitioner Muhammad Ashraf has applied for post-arrest bail in case FIR No.585, dated 11.12.2019, U/S 338-C, 322, 376, 201, 229, 420, 468, 471/34 PPC, P.S. Koral, Islamabad.

2. Brief facts referred in the instant case are that Police received information from HBS Hospital, Alipur Farash on 11.12.2019 and received a dead body of Ayesha Bibi, aged about 26 years lying in the emergency of said hospital, which was brought by Muhammad Ashraf and Nasreen Bibi (husband & wife). It has been alleged that Ayesha Bibi died as a result of abortion conducted by said two accused persons with the help of some quack.

3. Learned counsel for the petitioner contends that petitioner is not nominated in this case and investigation has been completed to his extent; that challan has been submitted in the Court; that petitioner is just witness of Nikkah contracted between deceased Ayesha and Naveed Ashraf on 07.03.2019 at Chak No.20 G.B, Tehsil & District Nankana Sahib; that during the course of

investigation I.O has incorporated offences U/S 420, 468, 471/34 PPC to his extent on the ground that *Nikkah-nama* allegedly brought on record by principal accused Naveed Ashraf has not been verified from the record of *Nikkah* Registrar, although petitioner has nothing to do with the registration of said *Nikkah-nama*.

4. Conversely, learned State Counsel contends that accused has been nominated in this case during the course of investigation when *Nikkah-nama* of principal accused has not been verified and as such petitioner has acknowledged that he has signed the *Nikkah-nama* and the said *Nikkah-nama* was not found registered with *Nikkah* Registrar in the relevant date.

5. Arguments heard, record perused.

6. Cursory glimpse of record reflects that one Ayesha Bibi was found dead in the HBS Hospital Alipur Farash and on the information of hospital administration police intervened in the matter and lodged the criminal case and arrested Muhammad Ashraf and his wife Naseen Bibi on the charges of forced abortion of Ayesha Bibi, which resulted into her death.

7. The tentative assessment of record reveals that principal accused Naveed Ashraf who claims to be the husband of deceased Ayesha Bibi was also taken into custody and is behind the bars, however, he produced his *nikkah-nama* with Ayesha Bibi before the I.O but the same was not verified from record of *Nikkah* Registrar, who is also accused in this case and is still at large.

8. I.O of this case nominated the witnesses of *Nikkah* as accused in terms of Section 420, 468, 471, 201/34 PPC,

where-after present petitioner who is one of witness of the alleged *Nikkah* has been referred as accused who is stated to be real maternal uncle of Naveed Ashraf and real brother of nominated accused Nasreen Bibi.

9. I have confronted the I.O as to whether *nikkah* ceremony was verified during his investigation but he could not answer this aspect rather states that all the accused persons, who are witnesses of *nikkah-nama* or Registrar of *Nikkah* have not joined the investigation and are fugitive from law. The role of present petitioner is only to the extent of becoming witness of *nikkah* as *Wakeel* on behalf of Ayesha Bibi and as such he has no role for the registration of *nikkah-nama*, which has been found not registered in the record of *Nikkah* Registrar, even the alleged tempering is not attributed to the present petitioner.

10. Keeping in view the above position, the offence U/S 420, 471 PPC are bailable, whereas offence U/S 468 PPC does not fall under prohibitory clause of Section 497 Cr.P.C., even the case to the extent of present petitioner is one of further inquiry. Reliance is placed upon 2001 P.Cr.L.J 1921 (Habib Vs. The State), PLD 2011 SC 509 (Sameen Jan (Naib Tehsildar) and another Vs. The State and another) and 2010 YLR 546 (Aftab Ahmad Vs. The State and another). The petitioner is behind the bars since his date of arrest i.e. 22.01.2020 and no useful purpose would be achieved by keeping the petitioner behind the bars. Even otherwise all the relevant record is in possession of police, therefore, there is no apprehension of tempering with prosecution evidence at this stage.

11. In view of above, petitioner is entitled for

concession of post-arrest bail. Hence, instant petition is allowed. Petitioner is admitted to post-arrest bail, subject to furnishing of bail bonds in the sum of Rs.2,00,000/- (Rupees Two Hundred Thousand Only) with one surety in the like amount to the satisfaction of the learned trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid