

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

Criminal Misc. No. 771-B/ 2020
Ali Haris
Vs
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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14.07.2020	Malik Muhammad Iqbal, Advocate for the petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Mr. Muhammad Shahzad Siddiq, learned ASC for the complainant, Muhammad Mumtaz SI with record.
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This is post-arrest bail petition by accused/petitioner (Ali Haris) in case FIR No.223, dated 18.04.2020, under Sections 376/34, PPC, Police Station Golra, Islamabad.

2. According to the allegations set-forth in the FIR, on 18.04.2020 at about 11:25am, the complainant reported to the police that she is unmarried and residing in the house of her elder sister Dua situated in Lajpal Plaza, Sector E-11/1, Islamabad; that at about 07:30am when she was present at the roof of the Plaza, one Faheem, who was residing in the upper floor of their flat, asked her to come to his flat and when she entered the flat, said Faheem and his friend Ali Haris (petitioner) committed rape with her and also extended life threats.

3. Learned counsel for the petitioner contends that ingredients of Section 375 PPC are missing in the present case as there was no allegation of use of force or extension of life threats; no marks of violence were observed on the body of the victim; that DNA test is not held; the petitioner is juvenile as per school certificate

available at Page-8A, therefore, entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2017 PCr.LJ (Note) 199, 2017 PCr.LJ Note 68, 2018 PCr.LJ Note 132 and 2019 PCr.LJ 899.

4. On the other hand, learned counsel for the complainant contends that there is a promptly lodged FIR; the petitioner is nominated with specific allegation; the victim was medically examined on the same day and marks of violence were observed on her body; that offence alleged is heinous and falls within the ambit of prohibitory clause of section 497 Cr.PC, therefore, petitioner is not entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2020 SCMR 590, 2019 PCr.LJ 1188, 2020 MLD 588, 2019 PCr.LJ (Note) 65, 2020 MLD 155, 2020 MLD 967.

5. Learned State Counsel added that the petitioner after the commission of offence succeeded to escape and was arrested subsequently; co-accused Faheem is still at large; the victim is 17 years of age; ingredients of section 375 PPC are very much available and that the MLR of the victim supports the allegation and that the challan has been submitted for trial on 03.05.2020, therefore, petitioner is not entitled to the concession of bail. Learned State Counsel placed reliance upon case laws reported as 2015 PCr.LJ 1163 and 2018 PCr.LJ 498.

6. Arguments heard, record perused.

7. Perusal of record reveals that the victim is unmarried and aged about 17 years. She in her statement under Section 164 Cr.PC fully

implicated the present petitioner despite the fact that the petitioner was made to sit in the Court and was afforded an opportunity of cross-examination. Her statement is consistent with the contents of FIR.

8. The victim was medically examined the same day and as per MLR (i) bruise and swelling on right eye (ii) Scleral beam on left eye and (iii) fresh scratches on the neck were observed by the Medical Officer while the report of chemical examiner is still awaited.

9. The victim, an unmarried girl with just 17 years of age, has allegedly been stigmatized by the petitioner. The question before the Court is why a real elder sister and brother in law of the victim would use their own younger sister as a tool for such a heinous offence. The elder sister of the victim in her statement before the I.O. stated that their parents had died and her three younger sisters including the victim are residing with her. That on 18.04.2020 at about 08:00 am on being found the victim absent, she started search in the Plaza and was informed by Ali Hussain that the petitioner along with his friend Faheem committed zina with the victim and they tried to apprehend the assailants but they succeeded to escape.

10. The whole life is before ahead of the victim and this FIR goes with her and stigma attached to her will affect her whole life to come particularly when she is unmarried. The punishment provided for the offence is death or imprisonment of either description for a term which shall not be less than ten years or more than 25 years and shall also be liable to fine

which falls within the ambit of prohibitory clause of section 497 Cr.PC and is an offence against the society.

11. The case law relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

12. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is **dismissed**.

13. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran