

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

Criminal Misc. No.851-B/2020
Abdul Rehman
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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03.08.2020	Syed Ali Imad-ul-Islam Shah, Advocate for petitioner, Ms Khudaija Ali, learned State Counsel, Jam Khurshid Ahmad, Advocate for the complainant, Muhammad Mumtaz SI.
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This is post-arrest bail petition by accused/ petitioner (Abdul Rehman) in case FIR No.215 dated 12.04.2020, under Sections 376, 34, 109 PPC, Police Station Golra, Islamabad.

2. According to the allegations, set-forth in the FIR, on 12.04.2020 at about 03:00 pm, Abdul Rehman (petitioner), Asrar and a girl took the complainant to a house in a white colour vehicle where two other persons were already present with fire arms; Abdul Rehman extended life threats to her at pistol point; said Asrar, petitioner and another person committed zina with her; that Abdul Rehman took mobile phone from the lady and made nude snaps and video of the complainant; that thereafter they put her in a vehicle and dropped at Peshawar-Rawalpindi GT Road near Bus Stop Chungi No.26 and thereafter she reported the matter to the police of P.S. Golra, Islamabad.

3. Learned counsel for the petitioner contends that the cell phone regarding which it was alleged in the FIR that naked and other pictures of the complainant were taken, has not been

recovered; that place of occurrence has not been mentioned whether it was Islamabad or Rawalpindi and Chungi No.26 is also situated in the Rawalpindi; that statement of the complainant under Section 164 Cr.P.C. has not been recorded despite the fact that at many times schedule was given to the complainant but she could not get recorded her statement, therefore, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2020 SCMR 971, 2020 SCMR 871, 2017 SCMR 366, 2016 SCMR 18, 2011 SCMR 1945 and PLD 1998 SC 97.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant contends that it is a promptly lodged FIR; that there is no *malafide* as alleged; that as per FIR it is not mentioned that occurrence is of Rawalpindi; that DNA report was negative due to the reason that the samples were transmitted by the prosecution with the delay as occurrence is of 12.04.2020 while sample were sent on 21.04.2020, so defect on the prosecution cannot be termed as beneficial to the present petitioner/accused.

5. Arguments heard, record perused.

6. It is a matter of record that the complainant had repeatedly been called to accompany the police for inspection of the crime scene but till this day she did not come forward. The exact location of the alleged place of occurrence is not mentioned in the FIR while it contains the addresses of the parties as of Rawalpindi so, the very registration of FIR at

P.S. Golra within the jurisdiction of ICT, particularly in absence of description of exact scene of crime and failure on the part of complainant despite repeated requests of the I.O. to visit the place of occurrence. This doubt goes in favour of petitioner/accused.

7. Record further reveals that the prosecution story as set-forth in the FIR and statement under Section 161 of the husband of complainant dated 12.04.2020 states that the accused told the husband of petitioner that complainant and accused are in Nikah with each other and now when he has got the knowledge that she is already married with Husnain Abid, therefore, he is ready to settle the issue amicably subject to payment of Rs.66000/- which has been paid to the present petitioner/accused and now there is no dealing for future. This fact demonstrates that story as stated in the FIR and as stated in the said investigation come forward by way of statement of husband of complainant are contrary in nature. The I.O. of the case has stated that previously petitioner/ accused having no criminal record of any nature and Chungi No.26 falls within the territorial jurisdiction of Police Station Golra Sharif, Islamabad.

8. The DNA report eliminates the possibility of contribution of the petitioner to the DNA of the complainant.

9. In this scenario, when the complainant did not appear for recording of her statement under Section 164 Cr.PC despite the fact that the I.O. had taken time from the concerned Magistrate 3-4 times for the purpose. The complainant did

not accompany the Investigating Officer at the crime scene despite repeated asking of the I.O., she also did not appear before the SDPO despite service and promise and constant reluctant attitude/conduct of the complainant to cooperate in investigation, the case for grant of post arrest bail to the petitioner being one of further inquiry has been made out.

10. Consequently, the instant bail petition is accepted, petitioner (Abdul Rehman) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran