

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

Criminal Misc. No. 126-B/2020

Baqir Hussain

Vs

The State and others

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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02.03.2020	Mr. Khalid Mahmood Gothel, Advocate for petitioner. Mr. Tahir Hameed Khan, learned State Counsel with Muhammad Yousaf S.I/I.O, and Abdul Razzaq S.I/S.H.O. Police Station Noon, Islamabad. Ch. Qaiser Nazir Sipra, Advocate for respondent No.2.
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This is post-arrest bail petition by accused-petitioner {Baqir Hussain} in case FIR No.228 dated 29.10.2019, under Sections 377, 377-B PPC, Police Station Noon, Islamabad.

2. The record appended with the petition reveals that earlier bail petition was rejected by the learned Additional Sessions Judge/GBV Court, Islamabad-West vide order dated 30.01.2020.

3. Learned counsel for the petitioner contends that petitioner retains no previous criminal record; there is three hours delay in lodging the FIR; DNA report has not yet been submitted and that petitioner remained on two days' physical remand but no incriminating material was recovered from his possession, therefore, case being of further inquiry, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case law reported as 2016 PCr.LJ Note 41, 2014 PCr.R 1242, 1989 MLD 3978, 1995 PCr.LJ 541 and 1984 PCr.LJ 2548.

4. On the other hand, learned State Counsel assisted by learned counsel for respondent No.2/complainant states that petitioner is duly nominated with specific role; no motive has been alleged by the petitioner; medical report confirms that petitioner was fit for the purpose of said offence; that accused/ petitioner is aged about 22/23 years while the victim is just nine years old. Learned counsel for complainant has placed reliance upon case law reported as 1999 PCr.LJ 46. Lastly prays for a direction to the learned Trial Court for speedy conclusion of the trial.

5. When confronted, I.O. states that incomplete challan in the subject case has been submitted and only deficiency is the DNA report which will be submitted within 2/3 days.

6. As per statement of learned State Counsel, after submission of challan, charge has been framed and the case has been fixed for today for recording of evidence.

7. Arguments heard, record perused.

8. According to the allegations as per FIR on 29.10.2019 at about 07:30 pm, within the area of Usman Town, Jhangi, petitioner subjected Muhammad Islam nine years old boy, son of the complainant, to sodomy.

9. 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

nine years, for false implication of petitioner and that too without any reason.

10. The assertion of learned counsel regarding false implication is of no help to the petitioner particularly in the light of case law reported as 2016 PCr.LJ 454 wherein, it is held that:-

“The FIR has been lodged by the father of the victim aged about 5/6 years with utmost promptitude, wherein, the accused/petitioner is directly charged for the despicable act, which becomes more abhorable when seen in light of the fact that a minor child of 5/6 years has been subjected to the alleged act by the Qari/accused/petitioner who was employed to teach Holy Quran to the victim, a student of prep class.”

11. As for as reliance of learned counsel on the case law reported as 2016 PCr.LJ Note 41, 2014 PCr.R 1242, 1989 MLD 3978, 1995 PCr.LJ 541 and 1984 PCr.LJ 2548 is concerned, it is settled proposition of law that every criminal case is to be decided in its own peculiar facts and circumstances. The case law relied upon entail distinct facts and circumstances, therefore are not attracted in the present situation.

12. The argument of learned counsel that recovered motorcycle was of a friend of the petitioner, therefore, recovery retains no evidentiary value is devoid of force as according to prosecution version, same was under the use of petitioner who, allegedly, got recovered the same. The alleged offence falls within the ambit of prohibitory clause being a heinous crime. It is an offence against the society and should be dealt with iron hands. The ground that in absence of DNA report,

petitioner's case calls for further inquiry is devoid of force in the light of case law reported as 2018 YLR Note 105.

13. It is an admitted position that after submission of challan, the charge has been framed and now the case is set for recording of evidence and in the light of case law reported as *Rehmatullah. Vs State {2011 SCMR 1332}*, the courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation, would be to direct the trial court to conclude the trial of the case within a specific period.

14. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is dismissed. The I.O. is however directed to collect DNA report from the concerned agency and submit the same before the learned Trial Court without further delay. The learned Trial Court is directed to conclude the trial preferably within period of three months.

15. 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

Suhail