

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

Criminal Misc. No. 730-B/ 2020
Muhammad Asrar
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	M/s Agha Muhammad Ali Khan, learned ASC and Muhammad Rizwan, Advocate for the petitioner, Syed Shahbas Shah, learned State Counsel with Muhammad Mumtaz and Muhammad Nawaz Sis of P.S. Golra, Islamabad.
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This is post-arrest bail petition by accused/ petitioner (Muhammad Asrar) 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, Asrar (petitioner) 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 Abdul Rehman, petitioner and another person committed zina with her; that Abdul Rehman took mobile 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 involvement of the petitioner is tainted with *malafide* on the part of the complainant; that there is a delay in lodging the FIR; that petitioner

has no concern whatsoever with co-accused Abdul Rehman; that only name of the petitioner is mentioned in the FIR without any further identification; that no identification parade was conducted; that the complainant failed to point out the place of occurrence; that the petitioner is an educated man recently completed his M.Phil and involved due to litigation of his father with one Asim and Faiz, who in league with the complainant managed to get involve the petitioner in the instant case, therefore, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2017 SCMR 366, 2016 SCMR 18, 2011 SCMR 1945, PLD 1998 SC 97, 1987 PCr.LJ 1211 and 2004 PCr.LJ 145.

4. On the other hand, learned State Counsel contends that the petitioner is specifically named in the FIR, lodged soon after the alleged occurrence; that the complainant in her statement under Section 161 Cr.PC implicated the petitioner and that the 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.

5. The instant bail petition was initially taken up on 21.05.2020 when notices were ordered to be issued to the State and the complainant as well. On the next date of hearing i.e. 03.06.2020, learned counsel for the complainant entered appearance and prayed for an adjournment for submission of power of attorney and with consent of the parties, the matter was adjourned to 11.06.2020. It was then fixed for

18.06.2020 when nobody had appeared from petitioner's side and adjourned to 13.07.2020 when nobody entered appearance on behalf of complainant. On 13.07.2020, the arguments of learned counsel for the petitioner were heard and in order to afford an opportunity to the complainant, the matter was again adjourned for today i.e. 14.07.2020 for arguments of learned counsel for the complainant but the situation remained the same. It is a post arrest bail petition and cannot be kept pending for indefinite period for want of representation on behalf of the complainant particularly when the learned State Counsel is in attendance and ready to argue the case. Hence, arguments of learned counsel for the petitioner and learned State Counsel have been heard.

6. Record reveals that the Call Data Record-CDR, obtained during investigation, indicates that the petitioner at the relevant time had been in his native town in District Attock, a far off place from the alleged place of occurrence i.e. situated in Rawalpindi/ICT. The Investigating Officer acknowledged that as per his investigation, the petitioner was not within the limits of Rawalpindi/ICT at the relevant time. The concerned DSP/SDPO thoroughly investigated the matter, and vide report dated 22.05.2020 declared the petitioner as innocent but despite that the I.O. challaned the petitioner. The Investigating Officer confirmed that he sought permission from the concerned Magistrate many times for recording of statement under Section 164 Cr.PC but the complainant, despite repeated requests, did not appear before the

Magistrate. All these facts, *prima facie*, makes the case of the petitioner one of further inquiry.

7. In addition, the DNA report eliminates the possibility of contribution of the petitioner to the DNA of the complainant while it is also a matter of record that co-accused Mst. Sana Bibi was found innocent and was discharged from the case vide diary No.2 dated 13.04.2020. The Hon'ble Apex Court in an identical case titled Imtiaz Ullah Khan Vs The State and another (Criminal Petition No.425/2020) where the DNA report was negative and co-accused was found not involved in the commission of offence, allowed bail to the accused by treating the case as one of further inquiry falling within the ambit of Section 497 (2) Cr.PC. Reliance is also placed upon case law reported as **Muhammad Tanvir Vs The State and others (2017 SCMR 366)**.

8. It is also a matter of record that the complainant had repeatedly been called to accompany the police for inspection of the scene of crime 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, *prima facie*, makes the story one of highly improbable.

9. The documents referred by the learned counsel for the petitioner show that some litigation is going on between the father of petitioner and one Faiz un Nabi, who was allegedly seen in the company of the

complainant, therefore, the possibility of false implication of the petitioner, in view of the facts highlighted above, cannot be ruled out.

10. In this scenario when the DSP/SDPO found the petitioner innocent, the CDR demonstrates that at the relevant time, the petitioner was not within the vicinity of Rawalpindi/ICT, rather was in Attock, 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 for the purpose, the DNA report eliminates the possibility of contribution of the petitioner to the DNA of the complainant, the complainant did not accompany the Investigating Officer at the scene of crime 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 is made out.

11. Consequently, the instant bail petition is accepted, petitioner (Muhammad Asrar) 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.

12. 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