

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.MBA No. 2933-P/2017.

Salman Ghazanfar Vs The State.

JUDGMENT

Date of hearing. 12.01.2018

**Petitioner(s) by: M/s Kifayat Ullah
Shahabkhel, Imran Gul &
Sahibzada Anwar Ali
Advocates.**

State by: Mr. Arshad Ahmad AAG.

SHAKEEL AHMAD, J:- Through this single judgment, I intend to dispose of Cr.MBA No.2933-P/2017 alongwith connected Cr.MBA No.07-P/2017, filed by petitioners Salman Ghazanfar, Muhammad Riaz, Mst. Naila, Zeeshan, Mst. Shahida, Mst. Mehwish and Mst. Kiran as both the petitions are outcome of one and same FIR No.941 dated 18.12.2017 u/ss 371-A, B PPC, Police Station Gulberg, Peshawar.

2. The prosecution case as set forth in the FIR is that there was general complaint regarding running a

brothel house in the Flat of Mst.Naila w/o Muhammad Riaz, Zeeshan s/o Muhammad Riaz & Muhammad Riaz s/o Musharaf Din. On 18.12.2017 at 21.30 AM, the complainant was on gasht when in the meanwhile, he received information about presence of males and females in the aforesaid Flat in objectionable condition. Acting upon the said information, complainant alongwith other police officials including a lady constable raided the said Flat where a man and a woman were found in objectionable condition. They were arrested on the spot. On query the woman disclosed her name as Mehwish w/o Muhammad Afzal while man disclosed his name as Salman Ghazanfar s/o Ghazanfar Ali. In the said flat three other women were also present who disclosed their names as Mst.Naila w/o Muhammad Riaz, Mst. Shahida daughter of Yousaf, Mst. Kiran daughter of Bashir Ahmad and one male Zeeshan s/o Muhammad Riaz. All the above named accused were arrested on the allegation of running prostitution den/ brothel house in the said flat. The murasila was drafted and sent to the Police Station for registration of the FIR. All the accused were declined

post arrest bail by learned Additional Sessions Judge-VII, Peshawar vide order dated 22.12.2017, hence these petitions.

3. It was argued by learned counsel for petitioners that Sections 371-A & 371-B PPC are not applicable to the present case; that on the face of record the prosecution story is false and unbelievable. He lastly argued that the matter requires further probe into the guilt of petitioners.

4. On the other hand, learned AAG representing the State, argued that petitioners were arrested red handed on the spot for committing a heinous offence involving moral turpitude; that Sections 371-A & 371-B PPC are applicable to the case of petitioners; that the offences with which petitioners are charged, falls under the prohibitory clause of Section 497(1) Cr.PC therefore, petitioners do not deserve the concession of bail.

5. I have heard arguments of learned counsel for the parties and gone through the record with their valuable assistance.

6. Perusal of record reveals that Sections 371-A & 371-B PPC only apply to those persons who sell or buy any person with intent that such person would be used for the purpose of prostitution or illegal sexual intercourse but there is no such allegation against petitioners. The only allegation against petitioners is that petitioners Salman Ghazanfar and Mst. Mehwish were found in objectionable condition while the rest of petitioners were present inside the Flat. The FSL report of Mehsiwh regarding semen analysis on Shalwar and vaginal swabs are negative according to Report No.1044/17/KMC/17. Likewise, the FSL report of petitioner Salman Ghazanfar reflects that the swabs for semen is negative while positive for semen on Shalwar.

7. The place where raid was conducted by police on spy information was not public place but was owned and in possession of a private individual. Neither any search warrant was obtained by police nor any effort was made by police in that behalf. No respectable from the locality was associated in the impugned raid proceedings. The alleged police raid in such a situation could not be termed any better than an

"intrusion" which was an act prohibited by the Constitution, Law and the Holy Quran. The Law does not permit the registration of a case under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, on the report of a "Mukhbar" because this Ordinance has to be read in conjunction with the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 and "Mukhbar" being entitled to have his name and identity kept secret, this would allow him to even make false imputations of Zina with impunity which would defeat the very spirit and purpose of both Enactments. Such act would not be in conformity with the spirit of Surah Hujrat, Ayat 6 and guidelines provided by the Holy Quran in this behalf. Legislators in their wisdom having regard to the existing norms of society were conscious of the fact that if cases under such offences were permitted to be registered on spy information or on the complaints lodged by anonymous persons, such practice would have encouraged false reports involving innocent men or women for ill designs. The police officials by not obtaining search warrant for raiding the house in question has committed glaring illegality by

not following the mandatory provisions of Section 103 Cr.PC and also violated Article 14 of the Constitution of Islamic Republic of Pakistan. Police functionaries could not be permitted to flout the provisions of law, which otherwise would amount to derailing the entire judicial system. Moreover, Sections 371-A & 371-B PPC are not applicable under the attending circumstances of the case due to lack of evidence in respect of selling and purchasing a person for the purpose of prostitution therefore, case of petitioners squarely falls within the purview of Section 497(2) Cr.PC.

8. For what has been discussed above, both the bail petitions referred above are allowed and all the petitioners are admitted to bail provided they furnish bail bonds to the tune of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate concerned.

The above are reasons of my short orders of even date.

Announced:
12.01.2018.


JUDGE

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

JUDICIAL DEPARTMENT

J U D G M E N T

BA. No. 2933-P/2017

Date of hearing 12.01.2018

Salman Ghazanfar Vs The State

Petitioner by: ***Mr. Kifayatullah Shahabkhel, Advocate***

State by: ***Mr. Arshad Ahmad, AAG***

SHAKEEL AHMAD, J.- For the reasons to be recorded

later, petitioner Salman Ghazanfar s/o Ghazanfar Ali is admitted to bail in case FIR No. 941 dated 18.12.2017 under sections 371 A-B PPC at Police Station Gulberg, Peshawar, provided he furnishes bail bonds in the sum of Rs.1,00,000/- (one lac) with two sureties each in the like amount to the satisfaction of Judicial Magistrate concerned.

Announced.
12.01.2018


J U D G E