

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.M.BA. No.48-D/2018.

Abdul Rashid & another
Versus
The State, etc.

JUDGMENT

Date of hearing: **09.3.2018.**

Petitioner: by Mr. Farooq Akhtar Khan advocate

Respondents:by M/S Muhammad Anwar Awan and
Muhammad Ilyas Ahmad Damani Advocate on
behalf of state.

SHAKEEL AHMAD, J.- Through the instant petition filed under Section 497, Cr.P.C, the petitioners Abdul Rashid and Muhammad Bilal seek post arrest bail in case FIR No.461 dated 30.10.2017, registered under Sections 354/337-F(i)/337-F(vi)/34 PPC, at police station Paroa, District D.I.Khan.

2. It has been argued by the learned counsel for the petitioners that offence with which the petitioners are charged, does not fall within the prohibition contained in Section 497, Cr.P.C; that on the face of it, the allegation against the accused-

petitioners is frivolous and false, therefore, they are entitled to the concession of bail.

3. On the other hand, the learned counsel representing the complainant, argued that after release of the accused-petitioners on bail in case FIR No.279 dated 07.6.2017, registered under Sections 506/447/427/379/411 PPC, at Police Station Paroa, the petitioners repeated the offence, which culminated in registration of present case; that the petitioners misused the concession of bail already granted to them in the previous case, therefore, they are not entitled for bail.

4. Arguments heard and record perused with the able assistance of learned counsel for the parties.

5. Perusal of the record reveals that initially, the complainant and his wife was examined by the Medical Officer in THQ Hospital Parova, and they were referred to DHQ Hospital, D.I.Khan for X-ray and expert opinion of the Orthopedic Surgeon, but neither the X-ray report, nor report of Orthopedic Surgeon is available on the record in support of the MLC reports furnished by Medical Officers of THQ Hospital Parova, though it was mentioned in the said report that X-rays were

conducted on 26.10.2017, therefore, the case of the petitioners squarely falls within subsection (2) of Section 497, Cr.P.C. Even otherwise, section 337-F(i) PPC is punishable up to one year as Ta'zir which appears to be bailable, Section 354 PPC is also bailable, while Section 337-F(vi) PPC does not fall within the prohibitory part of Section 497, Cr.P.C. It is now settled that grant of bail in a case where the offence does not fall within the prohibitory clause of Section 497, Cr. PC, is a rule and its refusal is an exception. In this respect, reliance can well be placed on the cases reported as **Tariq Bashir and 5 others Vs. The State (PLD 1995 S.C. 34), Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR 1488), Waseem Ahmad Khan Vs. The State and another (2016 MLD 1807).**

6. So far as involvement of the petitioners in previous criminal case vide FIR No.279 dated 07.6.2017, under Sections 506/447/427/379/411 PPC, is concerned, suffice it to say, at this stage, this Court is only seized of the instant bail petition and effect of the previous criminal case is not relevant for disposing of the instant petition. In this respect, reliance can well be placed on the case reported as

**Qurban Ali Vs. The State and others (2017
SCMR 279).**

7. In view of the above, the petition in hand is allowed and the accused-petitioners are directed to be released on bail subject to furnishing bail bond in the sum of Rs:1,00,000/- with two sureties in the like amount to the satisfaction of the learned trial Court, who shall ensure that the sureties are local, reliable and men of means.

Announced.
Dt: 09.3.2018.

JUDGE