

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.M.BA. No. 453-M/2017

JUDGMENT

Date of hearing: **25.10.2017**

Petitioner:- (Sharafat Ali) by Mr. Ahmad Hussain, Advocate.

Respondents: - (the State & 1 another) by Malak Sarwar Khan State counsel and Mr. Saeed Khan, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- In series of bail petitions, the earliest presented bearing No. 276/4 of the year 2017 before the Court of learned Judicial Magistrate/Illaqa Qazi-1 Swat dismissed vide the order dated 25.09.2017, another application before the Court of learned Sessions Judge/Zila Qazi Swat marked for disposal bearing No. 519/4 of the year 2017 to the Court of learned Additional Sessions Judge/Izafi Zila Qazi-III Swat met failure on 29.09.2017 thereby dismissed.

2. This being an application for the post arrest bail in case FIR No. 955 dated 13.09.2017 the Petitioner Sharafat Ali is

charged under sections 506,452,447,354,337 F
(vi) PPC registered at Police Station Mingora
District Swat.

3. Here the complainant Mst. Mehnaz daughter of Amir Mashal who is wife of the Petitioner Sharafat Ali, this wedlock for the cancellation of the *Nikah* is under consideration before the learned Family Court. The Petitioner being annoyed with filing of the family suit for annulment of the *Nikah*, recovery of the dower amount 10 tolas gold alongwith Rs. 10 lacs, another amount of Rs. 6 lacs for the share falling in the immovable property and the dowry articles are recoverable in the sum of Rs. 35,000/- with the prayer for the recovery of maintenance allowance @ Rs. 20,000/- from the month of July, 2017 and onward till the *Iddat* period against him.

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4. The accused/Petitioner entered in the house of his *in-laws* on 05.09.2017 at the relevant time 20:00 hours for criminal intimidation of his wife to avoid her appearance

before the learned Family Court on 07.09.2017. While extending the criminal intimidation to his wife Mst. Mehnaz she was warned that she will also be killed, caught hold her collar (گرييان), torn her shirt and beaten her harshly with fist blows, thereby injured her on different parts of her body. Later, on 06.09.2017 at night time this occurrence was reported. During the scuffle the complainant Mst. Mehnaz wife of the Petitioner was thrown on the floor who sustained injuries on her over-all body, while on her head and right toe hurts were caused. This occurrence is stated to have been witnessed by the mother and sisters of the complainant.

5. While refusing the grant of bail in favour of Petitioner by the learned Additional Sessions Judge-III Swat, the punishment of section 454 PPC was converted into section 459 PPC and thereby this offence being more severe, which provides punishment with imprisonment for life or imprisonment of either description for a term extendable to ten years and shall also be liable to the same punishment

for committing *qatl* or causing hurt or attempting to cause qatl or hurt as is specified in Chapter XVI. Thus the Petitioner beating and exposing his own wife on head and other parts of her body as well as assaulted her by the use of criminal force by the husband to his wife with the intention to outrage her modesty.

6. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned Astt: Advocate General for the State, record with their assistance gone through.

7. Learned counsel for the Petitioner referred to 2009 YLR 588 (Lahore) " Umar Hassan and another vs the State and another", 2010 P Cr. LJ 1806 (Peshawar) " Zahir Nawaz and 2 others vs Nazia Bibi and 2 others, 2011 P Cr. LJ 615 (Lahore) Muhammad Riaz alias Dinga and others vs the State and another", 2011 MLD 1032 (Lahore) " Muhammad Zaffar Shah vs the State and another", 2012 MLD 1956 (Sindh) " Sanwan vs the State",

2009 YLR 2299 (Lahore) " Muhammad Arif vs the State and another", 2009 P Cr. LJ 389 (Peshawar) "Muhammad Zakriya and another vs the State and another", 2012 P Cr.LJ 1883 (Peshawar) "Khan Zada vs the State", 2014 MLD 390 (Peshawar) " Adil Khan vs Gul Nazir and another" and 2012 YLR 1903 (Sindh) " Muhammad Zahid and another vs the State. In the light of these dictums of the

Hon'ble Superior Courts prayed for the grant of bail in favour of the Petitioner. Inversely, learned counsel for the complainant duly assisted by the learned Astt: Advocate General orally argued the stance of the prosecution with vehemence and prayed for the utter dismissal of the bail petition.

8. This is not the first act of violence by the husband this Petitioner against his wife Mst. Mehnaz who is complainant restraining her to stay-away from the proceedings in the Family Court, where the plaint discloses that Mst. Mehnaz for entitlement of a decree on the basis of dirty conduct of her husband on the pretext of

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criminal intimidation, calling her names and severely beaten her, where an FIR No. 248 on 31.03.2017 was registered against the Petitioner/husband. The matter was patched up earlier by the compromise, as by that time Mst. Mehnaz wife of the accused/Petitioner was given assurance that in future the Petitioner will not repeat his demeanour, for all the charges levelled against him yet terms were reduced into conditions laid down in the agreement. Even besides the confirmation of the prayers later that case registered vide FIR No. 248 dated 31.03.2017 after being put in Court also ended in acquittal. This being the repeated offence the Petitioner is said to have entered in the house of his in-laws where in the presence of the mother and sisters of Mst. Mehnaz his wife, she was assaulted by using criminal force against her and with the intention to outrage her modesty.

The medical evidence speaks off that nature of injury has been termed to have been caused with blunt weapon of the type of grievous fallen under the definition of 337 F (vi) of the Pakistan

Penal Code, it invites punishment of the daman and may also be punished with imprisonment of either description for a term which may extend to seven years as ta'zir, which has been defined as '*Munaqqilah*' and is not bailable.

9. There is strong presumption attached to the judicial documents in the form of the suit pending against the accused/Petitioner introduced by his wife the complainant Mst. Mehnaz for annulment of the *Nikah* which is a strong motive. This second attempt for the repetition of the same offence would tantamount to exposure of the Petitioner to the act of barbarism by the desperate husband. Even the offence committed by the Petitioner would entail maximum punishment of seven years, the repetition of the same crime would fall under an exception for refusal of his bail.

10. This petition has got no force, which is hereby dismissed.

Announced
Dt: 25.10.2017.


JUDGE

Office
07/11/2017
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