

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

Cr.M B.A. No. 160-M/2017.

JUDGMENT

Date of hearing: **03.5.2017.**

Petitioners:- (Mst. Rehana & Dawood) by M/S Muhammad Raziq and Aziz Muhammad, Advocates.

Respondents:- (the State & 1 another) by Barrister Asad Hameed-ur-Rahman State counsel and Mr. Fazal Ahmad, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- Mst. Rehana and Dawood Petitioners herein, being implicated in case FIR No. 73 dated 03.03.2017 charged under sections 496-A, 109 PPC registered at Police Station Dargai District Malakand are jointly looking for their post arrest bail.

2. Prior to, an application bearing No. 132/4 of the year 2017 was preferred before the Court of learned Sessions Judge/Zila Qazi Malakand Camp Court Dargai, which was dismissed by an order dated 12.04.2017.

3. Gul Badshah who has come up as complainant reported that his daughter Mst. Rehana was engaged one year prior to making of this report. The '*Nikah*' was performed with Fawad son of Qabil Muhammad. His daughter Mst. Rehana is a student of Bachelor of Arts. She is a sports girl who has achieved many medals for her outstanding performance in various competitions. In order to participate in games she often used to visit different cities and then to return after 8/9 days. On this day falling on 01.02.2017 Mst. Rehana on the pretext to participate in games to be held in Lahore left her house when by now 12 days have been passed, but she has not yet returned. On collection of the information, it has now been disclosed that this time she had not gone to Lahore and on further information it is as learnt that she was enticed by Dawood son of Habib-ur-Rahman resident of Jaban Dargai for the purpose of marriage. Behind this act of contracting marriage Fida Muhammad son of Abdaal Nana resident of Sakhakot abetted

performance of *Nikah* being taken her by a Datson bearing No. AFR 017. While she left the house had taken away valuables golden ornaments 10 *tolas* and Rs. 300,000/- in cash. While making the report previous *Nikah-Nama/Mehr-Nama* of Mst. Rehana his daughter were produced as token of evidence.

4. Having heard arguments of learned counsel for the Petitioners, learned counsel for the complainant and learned State counsel, record with their assistance gone through.

5. Learned counsel for the Petitioners referred to 2011 MLD 1048 (Peshawar) "Abdul Ghafoor vs the State and another", 2011 MLD 1020 (Lahore) "Mukhtiar Ahmad vs the State and others", 2013 YLR 990 (Peshawar) "Said Nawab and 2 others vs the State through Additional Advocate General and another", 2010 YLR 312 (Peshawar) "Imran Bhatti and another vs Province of Sindh", 2010 P Cr. LJ 961 (Lahore) "Amir vs the State and another", 2013 YLR 2220

(Lahore) " Muhammad Zeeshan Zarif vs the State and another" and PLD 2013 Lahore 538 " Iqra Javed alias Saba vs Station House Officer and other". In the light of these dictums

of the Hon'ble superior Courts prayed for the grant of bail in favour of the Petitioners. On other hand, learned counsel for the complainant assisted by learned State counsel though did not place reliance on any precedents of the Hon'ble superior Courts, however vehemently opposed the submissions put-forward by learned counsel for the Petitioners and prayed for utter dismissal of the bail petition being bereft of merits.

6. This case is registered at the instance of learned Justice of Peace Dargai by way of acceptance of an application under section 22-A Cr.P.C. As far as applying of section 496-A PPC with regard to the role of Mst. Rehana is taken for, learned State counsel frankly admitted that the contents of Section 496-A PPC being defined under the mentioned section of law would not be attracted as to keep her behind the bars.

7. In the case of Petitioner Dawood who is said to have contracted marriage with Mst. Rehana for consideration of Mehr of Rs. 5,000/-, which was paid there and then at the time of solemnizing of the *Nikah*. To this effect there are dower entries in the *Nikah-Nama* at Serial No. 13 & 14.

8. The Petitioner Mst. Rehana credentials are available on the file, she being sports girl has participated in sports fixtures at Government Girls Secondary School. She being a successful Taekwondo player, who has given Taekwondo training and Referee Courses. She has participated in 11th Korean Ambassador Junior National Taekwondo Championship 2016. She being a complainant of complaint under section 200 of the Criminal Procedure Code read with sections 452,506 PPC pertaining to City B Division Sheikhpura against her parents including Fawad, who at the time was in contact being betrayed to him. She has recorded her statement on 09.02.2017 before the learned Judicial Magistrate Sheikhpura. This statement

would reveal she has contracted marriage on 06.02.2017 with Dawood Khan on her own free will and consent and nobody forced her. She has further stated that she has never been abducted and she on her own free will left the house of her parents with adding information that she has not taken any valuables alongwith her while leaving the house of her parents.

9. Had there are reason to believe that Mst. Rehana being abducted or enticed by co-accused/Petitioner Dawood she would never lodge this complaint against her own parents. This minimize the possibility of registration of case under section 496-A PPC against the accused/Petitioners. There are reasons to believe that this is a case of further inquiry into the guilt of the accused/Petitioners, who have now entered into *Nikah* and both of them verify the same. However it is open for the prosecution to prove earlier *Nikah* in between Mst. Rehana and Fawad Khan.

10. In view of the above observations, both the Petitioners are entitled to the concession of bail subject to their furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

11. These are the reasons of my short order of even date.

Announced
Dt: 03.05.2017.

JUDGE