

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

**Cr.MBA.No.337-D/2019**

Muhammad Shareef

Versus

The State and another

**JUDGMENT**

For petitioner: Mr. Nazar Muhammad Niazi  
Advocate.

For State: Mr. Adnan Ali, Asstt: A.G.

For complainant: Mr. Nadim Abbas Baloch Advocate.

Date of hearing: **22.11.2019.**

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**S.M. ATTIQUE SHAH, J.-** Through the instant petition under Section 497 Cr.PC, the accused/ petitioner Muhammad Shareef has sought post arrest bail in case FIR No.399 dated 22.8.2019 under Sections 496-A/365/376/342 PPC registered at Police Station Paharpur, District D.I.Khan. Earlier the relief of bail was refused to him by the Court of learned Additional Sessions Judge, Paharpur, District D.I.Khan vide order dated 26.9.2019, hence, this petition.

2. According to the FIR on 20.8.2019 at 1020 hours, complainant Mulazim Hussain reported to the local police that on 19.8.2019 at

'Pashin Wela' he was away in connection with labour while his wife and son had gone to Rangpur Adda for purchasing victuals and after some time when came to the house, they found his daughter Mst. Rehana Bibi missing. They started search of her and are satisfied that she was enticed away by accused Muhammad Shareef for the purpose of committing Zina with her as he had developed relations with her on mobile phone and demanded her hand but the same was refused.

3. Arguments heard and record perused.

4. Perusal of record reveals that the occurrence took place on 19.8.2019 at 'Pashin Wela' whereas the matter was reported to the local police with a sufficient delay on 20.8.2019 at 1020 hours for which no plausible explanation has so far been furnished by the complainant.

5. On 23.8.2019 the alleged abductee Mst. Rehana Bibi recorded her statement under Section 164 Cr.PC before learned Judicial Magistrate-II/MOD, D.I.Khan wherein she alleged that the petitioner enticed and took her away towards jungle where in an abundant room committed Zina-bil-Jabr with her for two nights and on 3<sup>rd</sup> night when he went to attend the call of nature she skipped from there and reached to the

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house in a QINGQI. Mst. Rehana Bibi was medically examined by the lady doctor on 23.8.2019. Perusal of her medico-legal report reveals that lady doctor did not observe any marks of violence on her body or on her private parts despite the fact that allegedly she was subjected to rape in an abundant jungle/room. It has further been noticed that no opinion regarding the commission of rape with the victim was given by the lady doctor after her medical examination, therefore, the prosecution story is, prima facie, not in line with the medical evidence.

6. Though the offence is heinous in nature and against the society and also falls within the prohibitory clause of Section 497 Cr.PC but there is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

7. In view of facts and circumstances of the case, it is to be seen by the learned trial Court that whether the alleged abductee was enticed away by the petitioner or she went with him with her own free will.

8. In view of the above, the petitioner has made out a case for grant of bail, therefore, this petition is allowed and the petitioner Muhammad Shareef is admitted to bail on furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees two lac) with two sureties, each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

9. The observations of this Court being tentative in nature, would not affect the mind of the trial Court in any manner whatsoever, during trial of the case.

10. Above are the detailed reasons for my short order of even date.

Announced.  
Dt: 22.11.2019.  
Imran/\*

JUDGE

(S.B)  
Hon'ble Mr. Justice S.M. Attique Shah

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