

Judgment Sheet
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 690-A/2022

JUDGMENT

Date of hearing.....21.10.2022.....

Petitioner (Adnan) By Mr. Kamal Farid Tanoli, Advocate.

Respondents (State & another)

State By Mr. Sajid ur Rehman Khan, Asstt: A.G and complainant
in person alongwith her sister namely Mst. Kanwal Kazmi.

KAMRAN HAYAT MIANKHEL, J.-. This petition has been moved on behalf of petitioner Adnan alias Nomi son of Ismaeel for admitting him to bail till final conclusion of trial in case FIR No. 494 dated 06.06.2022 registered under sections 365/376/511/341/34 PPC read with sections 53 of Child Protection Act at Police Station City District Mansehra.

2. As per contents of FIR, the allegation against the petitioner is that he and co-accused committed rape with the complainant.

3. At the very outset, learned counsel for the petitioner stated at the bar that the matter has been patched up with the complainant. The complainant present in the court stated at the bar that she has got no objection on acceptance of the bail petition. In this respect her statement was recorded and placed on file. Though the offence

with which the petitioner has been charged is not compoundable. However, the parties have themselves entered into compromise outside the court.

4. Offences under sections 365/376 PPC do not find mention in the table of section 345 (1) Cr.P.C, therefore, the same are not compoundable. Judicial notice of compromise was always taken by the court, though otherwise not compoundable. The august Supreme Court of Pakistan while taking judicial notice of compromise in non-compoundable offence, converted the criminal petition into leave to appeal and accepted the same by reducing the sentence to the one, he had already undergone. In this context reliance can be placed on the case reported as **Ghulam Ali Vs The state (1997 SCMR 1411)**.

5. If the complainant is no longer willing to prosecute the accused, then it is not for the courts to compel her to do so, as one can take the horse to pond for drinking water but he cannot compel him to drink the water. In a similar case reported as **Muhammad Akbar Vs The State 1997 MLD 3096**, the factum of compromise was taken into consideration while granting bail in offences of Sections 10 & 11 (Enforcement of Hudood)

Ordinance, 1979 read with section 377 PPC. Likewise, in the case reported as **Niaz Muhammad Vs The State 1987 MLD 1780**, compromise was taken into consideration and bail was granted to the petitioner. In the case reported as **Mussarat Elahi Alias Bibi Vs the State (1997 P.Cr.L.J 1193)**, the same view was followed. Besides, co-accused namely Ghulamullah Qureshi and Abdul Saboor have already been released on bail by this court vide order dated 02.09.2022, therefore, rule of consistency is also applicable to case of present petitioner.

6. Thus, I am fortified in my opinion that judicial notice of compromise having been taken place in the cases, even in non-compoundable offences, therefore, without going deep into the merits of the case, on the ground of compromise, besides, case being one of further inquiry into the guilt of the petitioner, this petition is accepted and the petitioner is admitted to bail on furnishing bail bonds in the sum of Rs.2,00,000/- (two lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate. The sureties must be locale, reliable and men of sufficient means.

Announced:
21.10.2021.
Aftab PS*/

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