

Judgment Sheet

PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr. MB No. 205-D/2021

Din Muhammad Vs. The State etc

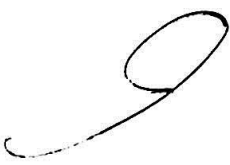
JUDGMENT

For petitioner: **Mr. Inamullah Khan Kundi Advocate.**

For State: **Mr. Rehmatullah Khan Asstt: A.G.**

For Complainant: **In person.**

Date of hearing **21.05.2021**

 **SAHIBZADA ASADULLAH, J---** Having been booked in case FIR No.100 dated 12.04.2021, registered under sections 496-A, 452, 506, 376 of Pakistan Penal Code at Police Station Kirri Khaisore, District D.I.Khan, the accused/petitioner after his arrest applied for bail before the Court of learned Additional Sessions Judge-III, D.I.Khan, which was declined vide order dated 04.5.2021, feeling aggrieved therefrom, the petitioner approached this Court through the instant bail petition.

2. The prosecution story as divulged from the first information report (F.I.R.) is that, on 12.4.2021 at 08:50 hours, complainant Muhammad Ramzan reported the matter in Police Station Kirri Khaisore to the effect that on 11.4.2021, he was out of his house to reap wheat crops when he received a cell

phone call from his brother Zeeshan that his wife and daughter were missing from their house, upon which he immediately reached to his house and on search it revealed to him that at 12:00, noon accused/petitioner Din Muhammad, in connivance with co-accused Habib-ur-Rehman, enticed away his wife for the commission of illicit intercourse. Initially, he tried to settle the matter through elders of the locality but in vain, hence, the FIR (ibid).

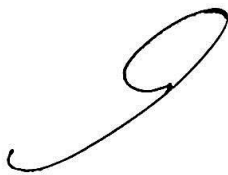
3. Today, the complainant appeared before the Court and stated that he does not want to engage counsel as according to him he has patched up the matter with the accused/petitioner, hence, arguments of learned counsel for the petitioner and the learned Asstt. A.G. heard and with their valuable assistance the record was gone through.

4. The record transpires that the occurrence allegedly took place on 11.4.2021 at 12:00 hours, whereas the report was lodged by the complainant on 12.4.2021 at 08:30 hours, while the abductee was recovered from her house on 12.4.2021 i.e. on the date when the matter was reported to police, but the abductee did not accompany the complainant to police station for lodging the FIR. It is yet to be established at trial that when the abductee was available in her house on the date when the FIR was lodged

by her father, then why she did not report the matter herself, rather on the said date, she recorded her 164, Cr.P.C. before the Court of Judicial Magistrate. On perusal of statement of the abductee recorded under section 164, Cr.P.C. the question arises that why she did not make hue and cry at the time of occurrence, rather she stated that after commission of the offence the accused let her free, whereafter, she called the peoples working in the nearby fields. Had she made hue and cry, the people working in the nearby fields would have attracted to the spot to rescue her. The above questions cannot be answered without recording pro and contra evidence which is the job of trial Court. The statements of alleged eyewitnesses namely, Muhammad Imran and Muhammad Mushtaq, recorded under Section 161, Cr.P.C. cannot be taken into consideration at this stage for the reason that the victim while recording her 164, Cr.P.C. statement did not disclose that the occurrence was witnessed by them, hence, the question whether the above-named persons had witnessed the occurrence or otherwise would be answered at the time of trial.

5. So far as heinousness of the offences and prohibition is concerned, it is now well settled that there is no legal or moral compulsion to keep an accused in jail on mere allegations, unless reasonable grounds do exist to believe that the accused is *prima facie* connected with the commission of

offence. Needless to say that ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail, 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, as held by the by the apex Court in case titled "Zaigham Ashraf Vs the State and others' (2016 SCMR 18).



6. Besides the above, while perusing the medico legal report of the victim, it transpires that the same does not support the allegations contained in the FIR for the reason that the concerned doctor did not notice any scratch mark on perineum or, other body parts nor any opinion was given with regard to commission of fresh intercourse, rather 14 weeks pregnancy was noticed.

7. True, that while seized of a bail matter, the Court is to make tentative assessment and deeper appreciation is not warranted, but equally true that bail applications cannot be heard and decided in a vacuum and the Courts of law should apply its judicial mind to the collected evidence, though tentatively, to avoid miscarriage of justice and if the doubt is apparent from record, its concession should be extended to the accused/ petitioner even at bail stage, as is held by the apex Court in case

titled Muhammad Faisal Vs. The State and another (2020

SCMR 971), wherein it has been held that:-

"It is established principle of law that benefit of doubt can even be extended at bail stage".

8. After assessing the collected material tentatively, this Court reaches to an inescapable conclusion that the petitioner has been succeeded in making out a case for bail. Resultantly, this petition is allowed and the petitioner is directed to be released on bail subject to furnishing bail bond in the sum of Rs.1,00,000/-(rupees one lac), with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate. Needless to mention that any observations made in the above order are tentative in nature which shall not influence the trial court.

9. Above are the reasons of my short order of the even date.

Announced
Dt: 21.5.2021

Kifayat/•



JUDGE

(S.B)

Hon'ble Mr. Justice Sahibzada Asadullah

