

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Bail Petition No.1902-P/2020

ORDER

Date of hearing : 10th July, 2020.

Petitioner (Abubakar Sadique) : By Mr. Shah Nawaz Khan Katlang,
Advocate.

Respondents:

The State : By Syed Sikandar Hayat Shah,
AAG.

Complainant : In person.

QAISER RASHID KHAN, J:- Accused-petitioner

Abu Bakar Siddique seeks his release on bail in case FIR No.380, dated 9.6.2020, under Sections 377 PPC read with section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 of Police Station Katlang, District Mardan, with the allegations that he had committed unnatural offence with the minor son of the complainant.

2. All that the learned counsel for the accused-petitioner vehemently contends is that the accused-petitioner has been falsely charged in a delayed FIR by

the complainant; that the FSL report is not available on the file to show that the accused-petitioner has in fact committed sodomy with the minor son of the complainant; that the accused-petitioner is a juvenile and lastly, that the complainant does not want to contest the bail petition and has got no objection over the release of the accused-petitioner on bail.

3. The learned AAG on his turn resists such contentions of the learned counsel for the accused-petitioner on the ground that the accused-petitioner has been directly charged by the complainant for the commission of the offence and the medical report also confirms the contents of the F.I.R.

4. Arguments heard and the available record perused.

5. As per the FIR, it was the complainant who reported about the incident as to how his minor son namely Maaz, aged about 8 years was taken by the accused-petitioner to a nearby garden and committed unnatural offence with him and the delay occurred

because of the intervention of the elders of the locality compelling him for compromise.

6. In the case in hand, it is the medical report of the victim, which is of significance, wherein the doctor has given the following details:-

"There are perineal bruise. Superficial and mucosal tear at 12 O'clock position in knee elbow position. Child is aged about 7-8 years. Two swabs taken and sent for analysis with clothes of victim. In my opinion child is victim of sodomy / rape."

The same per se shows that the minor son of the complainant, aged about 7/8 years has been subjected to an unnatural offence. As such, the mere non-availability of the FSL report in the case is of a little consequence, at the bail stage.

7. So far as the argument of the learned counsel in respect of the age of the accused-petitioner is concerned, I believe that juvenility by itself does not confer a license upon a person to commit such heinous

offence. Of late, such offences have attained alarming proportions and in such cases, the accused are mostly found to be juveniles. As such, if the mere tender age of the accused is taken into consideration for the grant of bail in like manner cases, it would lead to a licentious behaviour on the part of such individuals.

Since the offence is not compoundable, therefore, the mere statement of the complainant to have compromised the matter cannot be taken into account. Thus taking a tentative assessment of the available record, the accused-petitioner is prima facie connected with the commission of the offence which is both serious and heinous and also falls within the prohibitory clause of Section 497 Cr.P.C. Accordingly, I hold him disentitled to the concession of bail.

8. Resultantly, this bail petition stands dismissed.

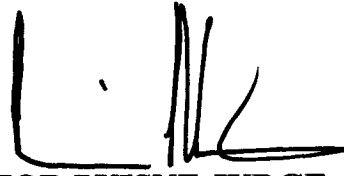
9. Needless to mention that the observations recorded in this order are purely tentative in nature and shall not prejudice the proceedings before the learned

trial court where the case be decided on its own merits

after recording evidence.

Announced.

Dated: 10.07.2020.

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SENIOR PUISNE JUDGE