

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Cr.M NO. 404-A/2015

Waseem Bashir son of Muhammad Bashir, resident of Thanda Choha, Tehsil and District Abbottabad, presently, District Jail Mansehra.

...ACCUSED/PETITIONER

VERSUS

1. The State.
2. Abid Sarfraz son of Sarfraz Khan, resident of Thanda Choha, Tehsil and District Abbottabad.

....RESPONDENTS

CHARGE UNDER SECTIONS 377 / 511 PPC VIDE
FIR NO. 295 DATED 08/06/2015, POLICE STATION
NAWANSHEHR DISTRICT ABBOTTABAD.

BAIL APPLICATION UNDER SECTION 497 Cr.PC
FOR RELEASE OF ACCUSED/PETITIONER ON BAIL
TILL FINAL DISPOSAL OF THE CASE.

Respectfully Sheweth: -

Brief facts of the case are as under: -

1. That the accused/petitioner is charged vide FIR No. 295 dated 08/06/2015 under sections 377/511 PPC of

Re-Filed 7/8/15
Additional District Registrar
Peshawar High Court
Abbottabad Bench
7/8/15

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. M No. 404-A of 2015

JUDGMENT

Date of hearing..... 3-9-15

Petitioner..(Waseem Bashir) by Mr. Masood ul Rehman Tanoli Advocate

Respondent..State etc. by Mr. Muhammad Naeem Akbari Adv.
complainant by Mr. Waheed Jan Muhammad Adv.

QALANDAR ALI KHAN, J:- Having been

charged and arrested for offence under

Sections 377 PPC read with Section 511

PPC vide FIR No.295 dated 08.06.2015,

registered in Police Station Nawansheher,

Abbottabad, the accused/petitioner,

Waseem Bashir, approached the Courts

below for bail but without success, hence

the instant petition for post arrest bail in

the aforementioned case.


2. The report was lodged at 2020

hours on 08.06.2015 by Abid Sarfaraz,

complainant/respondent No.2, who alleged that his 5/6 years old son namely Hanzala Sarfaraz who was a student of Prep class was being taught Holy Quran by the accused/petitioner and when at evening time mother of the minor child namely Mst Neelam Rani went to the 'Baittak' to inquire about the child from the accused/petitioner, she saw the accused/petitioner to have removed trousers of her son who was crying while sitting in the lap of the accused/petitioner. On the hue and cry of mother of the child, Ihsan Ali son of Khurshid and Haji Abdul Waheed son of Muhammad Aslam Khan reached the scene of occurrence and caught hold of the 'Qari'/accused-petitioner, who started begging for apology, but was handed over in the same condition to the police which reached the spot and received a written complaint

against the accused/petitioner from the complainant.

3. After registration of the case, the minor child was got medically examined, and the Medical Officer furnished the following report;



"Case of Sodomy. On P/R examination redness around anal canal, tight spastic anal sphincter, on further examination mucosal tear (extensive) about 4 x 5 cm at 2-4 O'clock position-1 cm from anal verge, deep examination was painful"

The Medical Officer also took anal swab and referred the child to surgical ward for examination of anal tear, but report of the surgical ward was not found available on the record. Likewise, the accused/petitioner was got medically examined and was found able to perform sex. The anal swab of the victim taken by

the Medical Officer at the time of his medical examination along with garments of the accused/petitioner as well as the victim were sent to the FSL, but the result received there-from was in the negative. After recording statements of mother of the victim, and witnesses namely Ihsan Ali and Abdul Waheed, mentioned by the complainant in the FIR, and completion of investigation, the local police/SHO Police Station Nawansheher submitted complete challan in the case on 12.06.2015.

4. Arguments of learned counsel for the accused/petitioner, Raja Muhammad Zubair, learned State Counsel, assisted by counsel for complainant heard, and record perused.

5. The FIR has been lodged by the father of the victim aged about 5/6 years with utmost promptitude, wherein, the accused/petitioner is directly charged for the despicable act, which becomes more

abhorable when seen in light of the fact that a minor child of 5/6 years has been subjected to the alleged act by the 'Qari'/accused-petitioner who was employed to Teach Holy Quran to the victim, a student of prep class.

6. Apart from the fact that no parents would bring such a nasty charge about their minor child when there is not even a distant suggestion to impute malafide to the parents of the child of very tender age, the eye witness account of mother of the victim, corroborated by the two persons mentioned in the FIR in their statements under section 161 Cr.PC, together with medical report showing redness around anal canal and the mucosal tear (extensive) about 4 x 5 cm at 2-4 O'clock position-1 cm from anal verge, is too overwhelming evidence on the available record to prima facie connect the accused/petitioner with the commission of

the offence. In the circumstances, the negative report of FSL would have no significance, more-so, when there is no allegation of penetration and ejaculation.

{2000 P.Cr.L.J 313 (Karachi), 2007 SCMR 698, 2009 P.Cr.LJ 978 (Peshawar) and 2000 P.Cr.L.J 33 (Lahore)}.

7. Having gone through the record, there appears no reason to extend the concession of bail to the accused/petitioner. The bail petition is, therefore, dismissed.

Announced.
03.09.2015