

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. M (Bail) No. 291-A/2020.

Date of hearing 20.04.2020.

***Petitioner/s (Syed Imtiaz Hussain Shah) by
Mr. Amjad Khan, Advocate.***

***Respondent/s (State & complainant) by
Sardar Muhammad Asif, Assistant AG.***

AHMAD ALI. J. Through this petition, accused/petitioner seeks his release on bail, who is charged in case FIR No. 45 dated: 09.01.2020 under section 376, 419, 420, 466, 468, 471, 109/34 registered at Police Station, Cantt, District, Abbottabad.

2. As two other co-accused namely Muhammad Aslam and Muhammad Ashraf have also moved their bail petition bearing No. 295-A/2020 titled: *Muhammad Aslam & another Vs. State & another*, therefore, same shall also be decided through this single order.

3. Brief but relevant facts as narrated in the first information report are that complainant Mst. Gul Bibi submitted an

application to the local police by stating that she was in *Dar-ul-Aman* since two years. As she wanted to marry with one Wafaq Ahmed, so with the consent of her parents, she asked the Incharge *Dar-ul-Aman* in this respect. As the said Wafaq Ahmed was nephew of Arif, who is the clerk of Social Welfare Department. On 20th April 2020, she was discharged from *Dar-ul-Aman* after furnishing personal surety bond and then went with the said clerk namely Arif to his house, where Nikah was performed with Wafaq Ahmed on 29th April, 2020. After marriage her husband went to Rawalpindi and never returned to home. That she was residing in the house of said Arif in his house in a village, where she came into knowledge that the said Wafaq Ahmed was not of sound mind, thus she decided to get divorce and said Arif ensured her that he would marry her somewhere else, therefore, she obtained divorce from Wafaq Ahmed, but said Arif did not fulfil his commitment and also not sent her to *Dar-ul-Aman* and then one day in the absence of his wife, he



raped her, due to which she got pregnant. That the said Arif threatened her for dire consequences, thereafter, she came to *Darul-Aman*, being safe there, she requested for legal proceedings against the accused. In the meanwhile, complainant had given birth a child, she also stated that the said child be handed over to his real father namely Arif. Hence, the instant FIR.

4. Arguments of learned counsel for parties as well as learned AG heard and record available gone through with their valuable assistance.

5. Meticulous sifting of record in the light of arguments reflects that the present accused/petitioners are not charged by the complainant in the first information report. In the whole story, the complainant never uttered a single word regarding involvement of the present accused/petitioners. The main accused nominated in the present case is one Arif.

6. On record there is copy of Nikahnama showing therein the said Arif as bridegroom, while the complainant has been shown as

bride. The accused/petitioner Syed Imtiaz Hussain Shah Nikah Khwan is shown to be Nikahkhawan of the said alleged Nikah, while the other accused/petitioners namely Muhammad Aslam and Muhammad Ashraf are mentioned as witnesses of the said Nikha, therefore, prima facie section 376 PPC is not applicable to the case of present accused/petitioners, while the punishment provided for remaining sections of law i.e 419, 420, 466, 471 PPC does not fall within the prohibitory clause of section 497 Cr. P.C. The validity of said Nikahnama would be seen at the time of trial as at the bail stage only tentative assessment of record is required and deeper appreciation is not permissible.



7. In Zafar Iqbal's case (2009 SCMR 1488), a larger Bench of the august Apex Court has explicitly expressed the principles for considering the grant of bail, where offences do not fall within the prohibitory clause of section 497 Cr.P.C. The said principles have consistently been followed by the Honourable Supreme Court, as it has

been held in Riaz Jafar Natiq's case (2011

SCMR 1708) that:

"Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into an appeal and the same is allowed and, resultantly, the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs. 1,00,000 (Rupees one hundred thousand only) with two sureties each in the like amount to the satisfaction of the learned trial Court."

Similarly, the august Apex Court, in unequivocal terms held in Muhammad Tanveer's case (PLD 2017 SC 733) that:

"Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts."

Although in some special laws there are specific provisions, limiting the scope of section 497, Cr.P.C. however, this Court in many reported cases has laid down binding principles that the provisions of section 497, Cr.P.C. shall not be ignored even in those cases and the guiding provisions/principles given therein shall always be kept in mind while considering the grant or refusal of

bail.

In this regard the case of The State v. Syed Qaim Ali Shah (1992 SCMR 2192) and the famous case of Khan Asfandiyar Wali and others v. Federation of Pakistan (PLD 2001 SC 607) are much relevant, where principle of section 497, Cr.P.C. was held to be applicable even to such cases of course subject to slight limitation.

We expect the Courts below to adhere to these binding principles in future and not to act mechanically in the matter of granting or refusal of bail because liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach."

8. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in 2008 SCMR 807 "Haji Muhammad Nazir Vs. State".

9. The observations made hereinabove are tentative in nature for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case. In this regard the

august Supreme Court of Pakistan in Shuaib

Mehmood Butt Vs. Iftikhar-ul-Haq (1996

SCMR 1845) has rendered clear guidance,

which is to the effect that:-

"However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law at the time of disposal of the case, which of course, needless to say, is the function of the trial Court".

10. In view of the above stated facts and circumstances the case, this Court reached to the conclusion that the accused/petitioners have made out their case arguable for the purpose of bail, therefore, this and connected bail petition are allowed. They be released on bail, provided they furnish bail bonds in the sum of Rs. 2,00,000/- (two lacs) with two sureties, each (in respect of each accused) in the like amount to the satisfaction to learned *Ilaqa* Judicial/Duty Magistrate, who shall ensure that the sureties are local reliable and men of means.

Announced.

20.04.2020.

Tahir P/Secretary.



JUDGE