

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.1744-P/2015

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner

Akbar Ali, seeks bail in case FIR No.455 dated 04.08.2015, registered under sections 496-A/109 PPC, in Police Station Charsadda.

2. According to report of complainant Anar Gul, his wife Mst. Nabia (mother of his three children), had developed relations with petitioner Akbar Ali and used to remain with him on contact on mobile phone; that on 31.07.2015, on his return from the village mosque after offering “Juma prayer” he found her missing and during search came to know that she has been enticed away by petitioner with the help of co-accused Inamullah and Bilal, for the purpose of marriage, hence, this case.

3. Arguments heard and record perused.

4. Record divulges that neither complainant nor anybody else has furnished the ocular account of taking or enticing away Mst. Nabia by the petitioner. Rather, according to report of complainant, she had relation with petitioner. There is no allegation of illicit intercourse against the petitioner with Mst. Nabia. She has also been arrayed as an accused in the case. Her medico legal report qua sexual intercourse is in the negative while she has not been recovered from the custody or detention of the petitioner. To constitute an offence under section 496-A PPC, there must be (i) taking or enticing away a woman by a person (ii) the intention behind such taking or enticing must be that of illicit intercourse with and (iii) there must be her detention and concealment. As discussed above, on the available record, I do not see the above essential ingredients to constitute the offence under section 496-A PPC. Learned counsel for the petitioner argued that the offence falls within the purview of S.496-B PPC which deals with fornication, which is bailable and the petitioner would be entitled to be released on bail. I disagree with the argument of the learned counsel for the petitioner on the ground that for an offence of fornication within the meaning of S.496-B PPC, there must be a willful sexual intercourse between a man and woman with each other,

who are not married to each other, but in the instant case, nothing is on the record to show any sexual intercourse of the petitioner with Mst. Nabia, therefore, it is yet to be determined during trial as to which of the offence has been committed. The petitioner has not confessed his guilt. Investigation in the case is complete and he is no more required for further interrogation, thus, keeping him behind the bar would serve no beneficial purpose for the prosecution.

5. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

Announced
03.11.2015

J U D G E

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

