

B/R

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M B.A No. 878-M/2022

Ameer Badshah.....(Petitioner)

vs

The State & another.....(Respondents)

Present: Mr. Abdul Halim Khan, Advocate for the petitioner.

Mr. Saeed Ahmad, Asst:A.G for the State.

Mr. Ikramullah Khan (Jandool), Advocate for the complainant.

Date of hearing: 02.12.2022

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. The instant bail petition has been moved by Ameer Badshah, arrested in a case registered vide FIR No. 193, on 09.09.2022, u/ss. 376/511/34/354, PPC, read with section 46(5) of the Khyber Pakhtunkhwa Mental Health Act, 2017, at Police Station Samarbagh, District Dir Lower. He seeks his post arrest bail.

2. Allegation against the petitioner/ accused is that he, alongwith other co-accused, attempted rape of Mst. Mashroqa, sister of the complainant, in the field of maize crops, situated in Nawo Koto, within the

criminal jurisdiction of Police Station Samarbagh, Dir Lower.

3. I have heard arguments of learned counsel for the parties and the learned Assistant Advocate General, for the State and perused the record.

4. The petitioner/accused has been directly charged in the FIR by the complainant/ brother of the victim for attempted rape. The victim is admittedly a mentally ill person. The record shows that the petitioner/accused was not alone but accompanied by two other persons. They made a clear attempt of rape by stepping off her clothes in a maize field, and it was her hue and cry that the petitioner/accused ran away from the spot. The mere fact that the victim has not been examined, does not appear to be a worth consideration ground for the grant of bail. The reason obviously is that there is a prima facie case of attempted rape against the petitioner/accused. The record also shows that the victim was taken away in a rickshaw to the place of the occurrence. It is worth observing that attempt of a mentally ill person reasonably connect the petitioner/accused with the commission of the offence in hand. There is sufficient case law on the definition of attempt to commit an offence. In **Muhammad Aslam v. The State** (PLD

1985 Federal Shariat Court 282), the Hon'ble Federal Shariat Court has exhaustively discussed the term "attempt" by referring to several law dictionaries and cases from Pakistan and India. For the sake of brevity, I would reproduce the relevant paragraph from Halsbury's Laws of England, Vol. II, 4th Edition:

"64. Acts constituting attempt.—An attempt is any over act immediately connected with the commission of an offence and forming part of a series of acts which, if not interrupted or frustrated or abandoned, would result in the commission of the completed offence. Acts remotely leading towards the commission of an offence cannot constitute an attempt; the acts must be immediately connected with the offence. An act done preparatory to the commission of an offence is not sufficiently proximate; and it is not an attempt merely to procure materials with which to commit the offence."


The Hon'ble Court concluded as under:



"It is thus well-settled now that there are several stages or ingredients for the commission of an offence. The first and the basic ingredient is the intention or *mens rea* to commit such offence which is the mental process which can be judged or gathered from the surrounding circumstances. The second stage is of preparation which consists in devising or arranging the means or measures necessary for the commission of the offence. After the preparation and before the actual commission of the offence is the stage of attempt i.e., performance of some over-acts which if not interrupted or frustrated or abandoned would result in the commission of the completed offence. However, there is very thin line between an attempt and actual commission of offence."


5. Similarly, in a 1983 case titled as Ghulam Haider v. The State reported as 1983 SCMR 842, the Hon'ble Supreme Court of Pakistan held that catching hold of breast of a woman and removing her Shalwar by a male attacker and the removal of the loin-cloth of the male attacker himself would amount to clear indications of the attacker's intention to commit rape. While emphasizing this aspect in the perspective of Islamic teaching, the Hon'ble Court observed:

"In our society which we claim to be Islamic, catching hold of the breast of a woman and removing her Shalwar as well as the removal of the loin-cloth of the male assailant are clear indications of the assailant to commit sexual intercourse with the victim and therefore offence would fall under section 18 read with section 10 of the Ordinance and not under section 354, P.P.C."

 As already noted above in the instant case, the petitioner/accused has been charged alongwith two other accused for having taken the victim, who is also admittedly a mentally ill person, to a field, where he stepped her naked and touched her body, which clearly indicates an attempt to rape.

6. As far as the delay in registration of the case is concerned, the same has been duly explained. As such, it is not fatal to the case of prosecution. Reliance is placed on Imtiaz v. The State (1978 P Cr. LJ 470). Needless to say, the petitioner/accused has

made pointation of the place of the occurrence. Furthermore, the rickshaw, in which the victim was taken to the place of the occurrence, is the ownership of the petitioner/accused, the registration documents of which were produced by one Hazrat Bilal. In such circumstances, reasonable grounds exist which tentatively connect the petitioner/accused with the commission of the offence in hand. In Arbab Ali v. Khamiso and others (1985 SCMR 195), august the Supreme Court observed:



“There are certain other features also in this case, which have not been attended in the High Court before giving a verdict that was a case of "further inquiry". It needs to be clarified that bail can be allowed (in a case otherwise allegedly falling under the prohibition contained in subsection (1) of section 467) under subsection (2) of section 487, Cr.P.C. when there are sufficient grounds, for further inquiry into the guilt of the accused but only on the condition when the Police Officer or the Court at any stage of investigation, inquiry or trial, as the case may be, comes to a definite conclusion that there are no reasonable grounds for believing that the accused has committed a non-Bailable offence. Without this finding bail cannot be allowed under subsection (2) on mere ground that there are sufficient grounds of further inquiry.”

7. In view of the above, the instant bail petition is dismissed. The observations recorded hereinabove are purely tentative in nature and should,

in no way, prejudice an independent mind of the
learned trial Court during the course of trial.

Announced
Dt: 02.12.2022


JUDGE

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