

## **JUDGMENT SHEET**

### **PESHAWAR HIGH COURT, ABBOTTABAD BENCH**

#### **JUDICIAL DEPARTMENT**

**Cr.Misc.B.A.No.423-A/2017**

#### **JUDGMENT**

*Date of hearing.....21-07-2017.....*

*Petitioner (s)... (Abdul Hameed) by Mr. Abdul Salam  
Dilazak, Advocate.....*

*Respondent (s)..... (The State etc) by M/S Yasir Zahoor  
Abbasi, Assistant Advocate General  
and Khan Gul Khan Advocate .....*

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#### **SYED MUHAMMAD ATTIQUE SHAH, J.-**

Accused-petitioner, Abdul Hameed, seeks his post arrest bail in case FIR No.45 dated 17.01.2017 under sections 365-B/376/34 of Pakistan Penal Code, 1860 registered at Police Station Kot Najibullah, District Haripur.

2. The allegations against the present accused/petitioner alongwith other co-accused, as per narration in the F.I.R. is that on 21.12.2013 at 8.30 AM, he has abducted Mst. Rimsha Bibi, complainant and committed rape with her.

3. Arguments of the learned counsel for the parties heard and record perused with their valuable assistance.

4           Perusal of record would reveal that initially one Mst. Fozaia Bibi, stepmother of present complainant has charged Mst. Hajra, Waqar and Waqas for the abduction of Mst. Rimshah. However, after her recovery, she recorded her first statement before Judicial Magistrate-IV, Peshawar on 04.01.2017, wherein, she stated that she had left her house three years before and was residing with her friend, who has now refused to look after her and stated that she be sent to Dar-ul-Aman due to threats from her family, however, she did not charge anyone in her statement. Thereafter, on 17.01.2017, she lodged the present F.I.R in Police Station Kot Najibullah against Mst. Razia Bibi, Ihsan Ullah, Bismillah residents of Umar Khan Kallay Lachi Kohat and one Shoaib resident of Haripur for her abduction and commission of rape with her. The present petitioner was neither charged in the F.I.R by the present complainant nor in her earlier statement recorded before the Magistrate on 04.01.2017. She has neither given features of the accused/ petitioner in the F.I.R nor she claimed that she could identify the present petitioner if he would come in front of her. She again recorded her statement on 20.02.2017 before Judicial Magistrate, Haripur under section 164

Cr.P.C and charged the present accused/petitioner alongwith one Umar Ghani for committing rape with her at different occasions, where they allegedly kept her for three years. No identification parade of the present accused/petitioner was conducted by the police/prosecution. Nothing incriminating is forthcoming on record of the case to *prima facie* connect the present accused/petitioner with the commission of alleged offence except divergent versions of the present complainant. Moreover, mere heinousness of an offence is not sufficient to refuse bail to an accused when otherwise a case for grant of bail is made out. Thus, in view of conflicting statements of alleged abductee, the case of the accused/petitioner becomes one of further inquiry in the present circumstances of this case and therefore he is held entitled to be released on bail.

5. The investigation in the case is complete, as supplementary challan has been submitted against the present accused/petitioner and he is no more required to the police or prosecution for further investigation.

6. The observations rendered hereinabove, would not affect the mind of the trial Court in any manner whatsoever, during trial of the case.

7. Consequently, this bail application is accepted and the accused-petitioner is admitted to bail, subject to his furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Hundred Thousands) with two sureties, each in the like amount, to the satisfaction of the *Illaq*a/Duty Magistrate, Haripur.

Above are the detailed reasons for short order of this Court of even date.

**Dt.21-07-2017.**

**J U D G E**

M.Saleem/\*