

**JUDGMENT SHEET
PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.
JUDICIAL DEPARTMENT**

**Cr.M BA No. 171-A/2020
Mujahid Vs The State**

Date of hearing: 09.04.2020

Petitioner (Mujahid) by: Mr. Sultan Muhammad Khan
Tanoli, Advocate.

State by; Raja Muhammad Zubair, AAG.

Complainant by: Mr. Naseer Ahmed Khan, Advocate.

JUDGMENT

AHMAD ALI, J. Through the instant petition, the petitioner (Mujahid S/o Rasheed), seeks his post-arrest bail in case FIR No. 01 dated 01.01.2020 u/s 377/355PPC read with Section 53 CPA, PS Sherwan, (Abbottabad).

2. Complainant Walidad Khan reported the matter to the local police alleging therein that his son Zeeshan Khan aged about 10/11 years disclosed that he went to take back his pigeon from one Mujahid who took him inside his house where he committed unnatural act with him and also recorded his video. Thereafter he put a currency note of Rs. 100/- in the pocket of victim and threatened him not to disclose the occurrence to anyone

otherwise he would kill him and would upload the video on the internet. On the report of complainant, FIR was lodged against the accused.

3. Arguments of learned counsel for the parties have been heard in detail and available record gone through.


4. Perusal of record reveals that the accused-petitioner was directly charged in the promptly lodged FIR. The victim and the accused, being co-villager are known to each other and there is no question of misidentification. There is no ill will between the parties to falsely charge the accused/petitioner. Report of FSL supports prosecution version at the moment. The mobile phone through which the accused/petitioner has allegedly recorded video, has also been recovered upon his pointation.



5. The victim in his statement recorded under Section 164 Cr.P.C has charged the accused/petitioner, endorsing the contents of FIR. The currency note allegedly put by the accused in the pocket of victim was also produced before the police and taken into possession through recovery memo. A minor child of 11/12 years of age has been allegedly subjected to immoral act and recording his video further increases the gravity of the offence. The offence

falls within the prohibitory clause of Section 497 Cr.P.C. Moreover, as per learned AAG as well as learned counsel for the complainant, the video recorded by the accused/petitioner was uploaded on the internet.

6. So far as applicability of section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 (hereinafter to be referred as the Act of 2010), is concerned, the definition of the "Child at risk" as contemplated under section 2(1)(e) of the Act coupled with the facts and circumstances of the instant case, it is ascertained that the alleged victim falls under the definition of "child at risk". In such eventuality, the applicability of section 53 of the Act of 2010, to the case of petitioner, is fully justified, which is, in fact, non bail-able.



7. Even, otherwise, the offence for which the accused petitioner is charged is too heinous and of moral turpitude, affecting the society in general and the life of an innocent victim in particular being stigmatized at the very early stage. The prosecution as well as Courts of law can play a vital role in curtailing such crimes while applying the true judicial mind to the governing judicature.

8. Before parting with this order, this court finds it necessary to mention that all the observations recorded

above are tentative assessment just 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. Guidance could be sought from case law reported in **1996 SCMR 1845**.

9. For what has been discussed above, instant bail being without any merit stands dismissed.

Announced
09.04.2020


J U D G E