

Judgment Sheet  
IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

Cr.Misc/B.A.No.1883-P/2017

JUDGMENT

**Date of hearing: 8.9.2017.**

**Petitioner by Mr. Muhammad Tariq Javed, advocate.**

**State by Mr. Muhammad Sohail Khan, AAG.**

**Complainant by Mr.Asad Jan Durrani, advocate.**

\*\*\*\*

**IJAZ ANWAR, J.-** Petitioner, Azam Khan son of Shindi Gul resident of Kamboo Post Office Pakha Ghulam G.T. Road, Peshawar seeks his release on bail, in case FIR No.844 dated 28.7.2017 registered under section 336 PPC/39 Child Protection Act of Police Station Chamkani District, Peshawar.

For the reasons to be recorded later on in the detailed judgment, this petition is accepted and the accused/petitioner is admitted to bail provided he furnishes bail bonds to the tune of Rs.200,000/- (rupees two lac), with two sureties each in the like amount to the satisfaction of the learned Illaqa Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

Announced  
Dated: 8.09.2017.  
\*T.Shah\*

  
JUDGE

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*Judicial department*

**J U D G M E N T**

*Cr.Misc:B.A No.1883-P/2017*  
*Date of hearing.....08.09.2017*

***Azam Khan Vs State & another.***

petitioner(s) by: Mr. Muhammad Tariq Javed, Advocate.

State by: Mr. Muhammad Sohail, AAG.

Complainant by:- Mr. Asad Jan Durrani, Advocate.

**IJAZ ANWAR, J:-** Petitioner Azam Khan seeks post arrest bail in case FIR No.844 dated 28.07.2017 registered u/s 336 PPC/39 Child Protection Act at Police Station Chamkani, Peshawar.

2. Earlier bail petition of accused/petitioner was refused by the learned Additional Sessions Judge-XIV, Peshawar vide order dated 09.08.2017.

3. Brief facts as per contents of FIR are that the complainant Noor Khan through Mad No.10 dated 24.07.2017 appeared in Chowki Shah Pur and reported the matter through written application that his son Azlan Shah is student of Iqra Rozat-ul-Atfal Trust Dalazak Road, Peshawar and doing Hifaz. On the day of occurrence his teacher namely Azam Khan has slapped him on right

side of face and due to which blood started oozing from his right ear. Now the child is feeling severe pain in his ear and cannot hear anything. Hence this FIR.

4. Arguments heard and record perused.

5. Perusal of the record reveals that there are some contradiction about the timing of medico legal report, similarly, initially the petitioner/accused was charged under Section 337-A (5) PPC, that was changed subsequently and replaced with section 336 PPC/39-Child Protection Act, besides the statement of the witnesses examined by the police makes the case of the accused as one of further inquiry. Moreover, detail scrutiny of the available record is neither advisable nor warranted at this stage, lest it would prejudice the case of either party.


6. The observation recorded above, shall have no bearing on the merit of the case and it will be decided on its own independent evidence. In PLD 2009 Lahore-312 the larger bench of the Lahore High Court held that:-

*"In view of what has been discussed above we have entertained no manner of doubt that in all cases of hurt provided for in Chapter XVI of the Pakistan Penal Code, 1860 the normal punishment to be awarded to an offender is payment of Arsh or Daman and the optional additional punishment of imprisonment as Ta'zir provided for the relevant offence can be awarded to an offender only where the offender "is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour" and in*

*the case of such an offender the sentence of imprisonment as Tazir is not to be less than one-third of the maximum imprisonment provided for the hurt caused. This, to us, is the only interpretation of the provisions of subsection (2) of section 337-N, P.P.C. as they stand today and if the legislature intends otherwise then it may suitably and appropriately amend the relevant provisions”.*

7. Thus, in view of the above, the accused/petitioner has made out a case for the grant of bail provided he furnishes bail bonds to the tune of Rs.200,000/- (rupees two lac), with two sureties each in the like amount to the satisfaction of the learned Illaqa Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

8. Before parting with judgment, this Court observe that it is a sensitive issue and relates to the children (future of this nation), hence, it is necessary to give an awakening call to those who matters in such cases, firstly will give an outlook of the matter.

 Corporal Punishment in school is defined in Wikipedia as, “school corporal punishment refer to cause deliberate pain or discomfort in response to undesired behaviour by students in schools and is a physical punishment intended to cause physical, pain on a person. It is most often used where there is substantial disparity of power between punisher and punished”.

9. Though section 89 PPC gave protection to such punishments, it is reproduced for convenience:-

***Section 89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.*** *Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.*

*Provided: First. That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;*

*Secondly. That this exception shall not extend to the doing of anything which person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;*

*Thirdly. That this exception shall not extend to the voluntary causing of grievous hurt or to the curing of any grievous disease or infirmity;*

*Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.*



10. The UN Convention on the rights of the child and other International and Regional Human Rights treaties require States to prohibit corporal punishment of children in all settings of their lives. Corporal punishment is a violation of their rights to respect for their human dignity and physical integrity, allowing such punishment is against rights of the children to equal protection under the law.
11. Recent studies show that about (52) States have prohibited all corporal punishment of children, including in the family home.

12. Pakistan being part of this global village has also expressed its commitment of prohibiting corporal punishment of children, including at home, at the meeting of the South Asia Forum in 2006. In July, 2014, the Government of Pakistan has re-affirmed its commitment to Law Reforms in the context of launching a National Campaign against Corporal Punishment. The Government of Sindh took precedence and passed law to ban corporal punishment for children, called as the Sindh Prohibition of Corporal Punishment Act, 2017 promulgated on 22.3.2017; similarly the Prohibition of Corporal Punishment Act, 2017 prohibits corporal punishment to children in Islamabad Capital Territory.

13. This Court is oblivious of the fact that corporal punishment in schools and work place is a routine. This treatment metted out to the children/student in the name of reformation/education is in fact violating their dignity, self respect and eliminating their sense of forbearance. This is infact one of the reasons of desperation and intolerance in our society, as in this way, these children learn to enforce their opinion through violence.

14. We have in this province, the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, that caters with the care, maintenance, welfare, training, education, rehabilitation and integration of children at risk in Khyber Pakhtunkhwa, however, till date, we have no law on banning Corporal Punishments at School etc. Off and on cases of corporal punishment in schools is reported and come up before the Courts,

however, in the absence of any special law banning such punishment in schools; it carries on and continues as a permissible practice. This Court would thus be failing in its duty to protect the fundamental rights of children, as such, the Registrar of this Court is directed to send the copies of this judgment to the Chief Secretary, and Secretary to Government of KPK, Elementary and Secondary Education, Peshawar to look into the matter and help the future of this nation by recommending appropriate legislation banning corporal punishments in schools.

These are the reasons of my short order of even date.

**Announced.**  
**Dt: 08.09.2017**  
\*T.Shah\*.

  
**JUDGE**

*Office*  
26/09/17