

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

Cr.M B.A. No. 253-M/2017.

JUDGMENT

Date of hearing: **15.6.2017**

Petitioner:- (Rahim Said) by Syed Fayaz Muhammad Qazi, Advocate.

Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and Mr. Ikramullah Khan, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- Rahim Said

is charged in FIR No. 268 dated 17.5.2017 under sections 336,341 PPC registered at Police Station Samarbagh District Dir Lower and is optimistic for the grant of his post arrest bail.

2. Prior to, an application for the similar relief before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Samarbagh at Dir Lower, which was dismissed on 27.5.2017.

3. The report lodged by the complainant Mst. Lal Meena who by that time was accompanied by her father Taj Muhammad

Khan and Mst. Saima Bibi in injured condition reported that Mst. Bachai Lal and her sons had closed the passage by blocking it through tree. In order to open the path they were asked which infuriated Mst. Bachai Lal, Sadiquellah and Rahim Said and started pelting stones, which hit the complainant on her right side of forehead, while her sister Mst. Saima Bibi was got injured on her left eye. The occurrence is stated to have been witnessed by Shafiullah and Rafiullah brothers of the complainant.

4. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned Astt: Advocate General for the State, record with their assistance gone through.

5. Learned counsel for the Petitioner relied on 2015 P Cr. LJ 747 (Sindh) “Shan vs the State”, 2017 YLR 335 (Peshawar Mingora Bench) “Saeed Ahmad vs Amjad Ali and another”, 2015 P Cr.LJ 1433 (Sindh) “Baber Gul vs the State” and 2017 MLD 599

(Peshawar Abbottabad Bench) “ Khalid vs Mst. Akbar Jan and another”. In the light of these dictums of the Honorable superior Courts prayed for the grant of bail. Inversely learned counsel for the complainant assisted by learned A.A.G referred to 2017 SCMR 364 “ Muhammad Sarfaraz vs the State and others” and opposed the grant of bail in favour of the Petitioner as he has been directly charged for inflicting injury on vital part of the injured Mst. Saima Bibi, due to which she has partially lost her eyesight.

6. This case has been registered under section 336 PPC, which pertains to punishment, provides for *itlaf-i-salahiyyati-i-udw*, this offence is defined under section 335, which reads as under:-

itlaf-i-salahiyyati-i-udw *whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-i-salahiyyati-i-udw.*

7. There are specific allegations against the accused/Petitioner that he has felted stones which hit Mst. Saima Bibi on her left eye. The medical report would further suggest that the Ophthalmologist who examined the patient opined that she has got serious injury on her left eye as her sight and power of vision is decreased. The Petitioner being charged in person there is no chance of misidentification as the pelted stones is said to have caused injury which has decreased the sight and has affected badly the eyesight even some permanent disfigurement may have been caused. The victim is a young girl of the age 15/16 years. It has been held in 2017 SMR 364 “Muhammad Sarfaraz vs the State and others” an appeal which was dismissed causing of an injury to an eye partially loss of vision declared by Ophthalmologist loss of vision permanent and could not be cured through surgery. The type of punishment would come under section 335 PPC.

8. In all probabilities, the Petitioner is not entitled to the concession of bail, hence this petition stands dismissed.

Announced
Dt: 15.06.2017.

JUDGE