

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**BAHAWALPUR BENCH BAHAWALPUR**  
JUDICIAL DEPARTMENT

**Crl. Misc. No. 2056-B/2019**

Muhammad Yousaf      **Vs.**      The State and another.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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27.08.2019      M/s Masroor Ahmad Khan and Malik Abdul Razzaq Bhupla,  
Advocates for the petitioner.  
Mr. Muhammad Ibrahim Khan, Advocate for the  
complainant/respondent No.2.  
Ch. Asghar Ali Gill, Deputy Prosecutor General with Mazhar,  
ASI

Through this petition filed under section 497 Cr.P.C., the petitioner namely Muhammad Yousaf is seeking post-arrest bail in the case FIR No.284 of 2019, dated 25.05.2019, registered at Police Station Uch Sharif, District Bahawalpur, in respect of offences under sections 376 and 365-B PPC.

2.      The allegation as against the petitioner, namely Muhammad Yousaf, culled from the evidentiary material produced before the Court, is that he committed rape with Ruqaya Bibi (the complainant of the case) after abducting her.

3.      The arguments advanced by learned counsel for the parties have been heard and record of this case has been perused with their able assistance.

4      This is bail after arrest and deeper appreciation is not allowed at this stage. It has been noticed by this Court that despite the fact that as per allegation in the FIR the complainant namely Ruqaya Bibi was abducted on 31.01.2019 but the matter was never reported to the police regarding her abduction by her relatives. The FIR was registered on 25.05.2019, only after Mst. Ruqaya Bibi had returned to her home, after a lapse of about four months from the day of abduction. This delay and failure to report the matter of abduction of the complainant by her relatives is indicative of the

lack of reliability upon the evidentiary material produced before the court in support of prosecution case. In the FIR, the complainant has leveled allegation of abducting and rape against the petitioner and his co-accused, but according to Nikah Nama dated 04.02.2019, appended with this petition, a valid Nikah exists between the alleged victim namely, Ruqaya Bibi and the petitioner. Apart from Nikah Nama, attested copies of orders passed by this Court in W.P. No.2497 of 2019 and W.P. No.4123 of 2019 have been appended wherein the said Ruqaya Bibi had categorically stated that she had contracted marriage with the petitioner with her free will, consent and without any duress. Learned Deputy Prosecutor General has submitted that during the investigation of the case the said Nikah Nama was verified and it was found that the same was genuine. The learned counsel appearing on behalf of the complainant has laid emphasis on the FIR, wherein the complainant has leveled allegation of abduction and rape against the petitioner. In this regard, I would like to observe about this disgusting trend in our society that firstly the girl elopes with her paramour, solemnizes marriage with him and later on when she joins her parents, she takes somersault and implicates her husband and in-laws on the asking of her parents. Even otherwise, it is settled law that such type of dispute has to be decided by Family Courts which is the best forum. The complainant of the case has already filed a suit for jactitation of marriage which is still pending. Reliance can easily be placed upon the case of "Muhammad Azam v. Muhammad Iqbal and others" reported as **PLD 1984 SC 95**, wherein the Hon'ble Supreme Court of Pakistan has been pleased to held as under:-

*“That the decision of a superior Court including the Supreme Court on the plea of Nikah will have effect on the same issue before a Family Court;*

*That at the trial level the decision in this behalf of the Family Court will have binding effect on the decision in criminal trial ~;*

*That unless there is pressing unavoidable need to proceed with the criminal trial (as is in the present*

*case to record essential evidence only regarding which there might be danger of it being lost) the Criminal Court should stay the proceedings and await the result of the contest on issue of Nikah before the Family Court, if the suit is already pending or is filed during the criminal trial proceedings; That otherwise too it can ask the party/person concerned to seek a decision on that issue from the Family Court and on refusal or failure in this behalf to raise the necessary presumptions That in the last-mentioned eventuality the criminal trial would Proceed with no change except firstly, as aforementioned about certain presumptions, and secondly, that the issue concerned shall be decided as nearly as possible in accordance with the spirit underlying the procedure prescribed by the Family Courts Act and the rules thereunder, in so far as they do not come in conflict with the procedure for the criminal trial-the provisions regarding compulsory two efforts at compromise would then not apply;*

*That in case the proceedings of the criminal trial are stayed the accused; might be released on bail so as to enable him them to pursue the Family Court case and refuse/cancel the same in exceptional appropriate, cases ;*

*That in case it is just and proper and the Sessions Judge or Additional Sessions Judge is empowered to try both the matters under both system of laws, the trial by the same Court would not be illegal provided the case under the Family Law is decided in the first instance ;*

*That when any case on the criminal side has reached the appeal stage but the issue is still pending before the Family Court, the hearing of the*

*appeal should be stayed for a reasonable time to await the decision by that forum and in case of intentional or otherwise inordinate delay, to take appropriate measures in re-consideration of any concession including bail and the stay, whether it is not being misused.*

*That when the same question is pending before the Federal Shariat Court and the High Court the latter would await the decision by the former Court.”*

The above facts create reasonable doubt in the prosecution story and it is settled law that the benefit of doubt can be extended in favour of the accused even at bail stage. Admittedly the petitioner is previous non-convict. He is behind the bars since his arrest without any fruitful progress towards the conclusion of his trial. Mere involvement in a heinous offence is no ground for refusing bail to an accused who otherwise becomes entitled for the concession of bail. The petitioner is a previous non-convict. The investigation qua him is complete and his person is no more required for further investigation, therefore, his continued incarceration would not serve any beneficial purpose at this stage.

5. For what has been discussed above, the case of the petitioner becomes one of further inquiry covered by subsection (2) of section 497, Cr.P.C. Liability of petitioner for the said offences would be determined by the learned trial court after sifting the evidentiary worth of the material produced before the same. Till then, case of the petitioner would be within the domain of section 497(2), Cr.P.C. calling for further inquiry into the petitioner's guilt. The petition in hand is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.500,000/- (rupees five hundred thousand only) with two sureties each, in the like amount, to the satisfaction of learned trial court.

6. Needless to mention that any observations made in the above order are tentative in nature and shall not influence the trial court.

*(Sadiq Mahmud Khurram)*  
*Judge*

WAQAR

Approved for reporting.

**Judge**