

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB. No.128-D/2020.

Muhammad Irfan
Vs.
The State & another.

JUDGMENT

For Petitioner: **Mr. Salimullah Khan Ranazai,**
Advocate.

For Respondent: **Mr. Adnan Ali, Asstt: A.G. &**
Muhammad Waheed Anjum,
Advocate.

Date of hearing: **15.4.2020.**

SAHIBZADA ASADULLAH, J.- Being booked in case FIR No.98 dated 06.5.2019, registered under Section 376/34 PPC read with Section 53 of Child Protection Act at police station Paroa, District D.I.Khan, accused/petitioner Muhammad Irfan son of Allah Ditta has approached this Court for his release on bail. Earlier, he was declined bail by the Court of learned Additional Sessions Judge-VI, D.I.Khan, vide order dated 30.9.2019.

2. Brief account of the prosecution story, as disclosed in the FIR, is that on 06.5.2019 at 1730 hours, Asma Bibi complainant, in the company of her father Karim Bakhsh, made report in the police station Paroa, to the effect that on the eventful day at about 10:00 a.m.,

she was going from her home to the house of her paternal aunt and when reached near the house of accused/petitioner in the thoroughfare, there petitioner and co-accused Muzamil catch hold of her, accused Muzamil put hands on her mouth and both the accused dragged her to the house of the petitioner. The inmates of the house had gone out for cutting the wheat crop. She was put on a cot in the residential room of the petitioner where she was beaten and subjected to *zina-bil-jabr*, whereafter, accused/petitioner tied her hands, while the co-accused Muzamil left the spot. She was let free after two hours by the accused/petitioner and on reaching her home, she narrated the occurrence to the inmates of her house. On report of the complainant, the instant case vide the captioned FIR was registered against the accused.

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3. Learned counsel for the petitioner argued the case at length and submitted that the report was lodged with a considerable delay and that the medical evidence does not support case of the prosecution. He draw the attention of this Court to the medical report available on file and also to the DNA report, the learned counsel for the petitioner stressed that though vaginal swabs were taken, but after analysis it was found negative. He lastly contended that the co-accused, whose bail was dismissed by this Court, when approached the


trial Court on fresh ground on the basis of compromise effected between the parties, he was released on bail. The main thrust of his argument was that as the offence was non-compoundable, so the role of both the accused could not be bifurcated and to him, the benefit extended to one of the accused should have been given to the present petitioner and that the rule of consistency does apply.

4. On the contrary, it was contended that the offence is non-compoundable and heinous in nature, therefore, compromise cannot be pressed into service to enlarge the petitioner on bail. It was further contended that the evidence collected by the investigating agency fully supports the prosecution version, therefore, the petitioner does not deserve the concession of bail.

5. Arguments heard and record perused.

6. The record was read thoroughly where it surfaced that the accused/petitioner has been directly charged for commission of the offence. It is a daylight occurrence, so no question arises with regard to misidentification of the culprits, that too when the parties belong to the same village. The stress of the learned counsel for the petitioner that the matter has been reported after a considerable delay, does not hold ground, as delay in such like matters is nothing but natural as the honour of both the victim and the family is

involved and the family takes high care to avoid a stigma and it is only when no option is left, the matter is reported. In case in hand, as the petitioner has been charged for ravishing the modesty of a young girl and the parents were passing through mental agonies, so in such state of affairs, it turns hard to decide and report, so the delay caused will not benefit the accused at this stage, keeping in view the peculiar facts and circumstances of the case. The victim was medically examined where it was found that the hymen was ruptured, which lends support to the case of the prosecution.



7. The learned counsel for the petitioner submitted that the co-accused has been granted bail by the learned trial Court on the basis of compromise, therefore, the petitioner deserves alike treatment. The submissions so made could not convince this Court, as no compromise was effected with the petitioner.

8. The learned counsel for the petitioner argued the case at length and wanted us to venture into the realm of deeper appreciation, but this Court is conscious of the fact that while seized of the bail matter, deeper appreciation is not warranted as it may prejudice the case of either side, rather the Court should adhere to tentative assessment of the material brought before. Prima facie, the petitioner seems connected with

commission of the offence and could not succeed in making out a case for bail. Reliance placed on case reported as *Aamir Bashir and another Vs. The State and another (2017 SCMR 2060)*.

9. Resultantly, this petition is devoid of merit, stands dismissed. Needless to mention that the observations made hereinabove, shall not affect merits of the case.

Announced.
Dt: 15.4.2020.

Kifayat/*


JUDGE

(S.B)

Hon'ble Mr. Justice Sahibzada Asadullah

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