

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Naeem Akhtar Afghan

Justice Shahid Bilal Hassan

Criminal Petition No.368 Of 2024

(On appeal against the judgment dated 14.03.2024 of the Peshawar High Court, Bannu Bench passed in CrI. Misc. (B.A.) No. 76-B of 2024)

Raza Khan

... .. Petitioner

Versus

The State & another

... Respondents

For the petitioner : Mr. Khush Amir Khattak, ASC

For the State : Mr. Shah Faisal Ilyas, Addl.A.G., KPK
Madad Khan, DSP (investigation)
Farid Khan, SI

Complainant: In person

Date of hearing : 23.07.2024

ORDER

NAEEM AKHTAR AFGHAN, J. The petitioner is seeking post-arrest bail u/s 4/5 of THE KHYBER PAKHTUNKHWA ELIMINATION OF CUSTOM OF GHAG ACT, 2013 (***Ghag Act, 2013***) r/w section 25 of the Telegraph Act, 1885 in FIR No. 459 of 2023 lodged with PS Cantt. District Bannu on 22 May 2023 by *Zangu Badshah* (the complainant) against the petitioner and his sons *Mashal Khan, Muqarrab Khan* and *Naimat Ullah Khan* with the statement that for the last nine years co-accused *Naimat Ullah* is insisting for his forcible marriage with daughter of the complainant namely *Basmeen* for which he and his daughter are not willing. During this period whoever approaches the complainant for hand of his daughter, the accused warn and restrain them. The accused are rebellious and powerful. Few years ago, on 2 April 2017, FIR No.247/2017 was got registered u/s 3, 4 and 5 of the *Ghag Act, 2013* with PS Cantt, District Bannu against accused *Naimat Ullah, Muqarrab Khan* and others wherein accused *Naimat Ullah* and *Muqarrab Khan* were arrested. Their bail applications were accepted by the Peshawar High Court, Bannu

Bench on the basis of their affidavits wherein they denied making *Ghag* for daughter of the complainant with further statement that they will have no concern with daughter of the complainant. Subsequently on the same ground they earned acquittal. One *Naik Daraz* approached the complainant and asked the hand of his daughter for his son *Ibrahim*. Both the families agreed to settle *Haq Mehr*, to write *Kabin Nama* and 4:00 pm of 21 May 2023 was fixed by both the families for engagement of *Ibrahim* with daughter of the complainant but co-accused *Mashal Khan*, *Naimat Ullah* and *Muqarrab Khan* contacted *Naik Daraz* through their cell phones and restrained him from engagement of his son with daughter of the complainant on the ground that as per custom/Riwaj they have made *Ghag* for the daughter of the complainant. On 9 May 2023 after *Asar* Prayer, at about 6:30 pm, co-accused *Naimat Ullah* with the petitioner were standing outside the mosque situated with outer gate of *Katcheri* awaiting the complainant. When the complainant came out of the mosque, they both affirmed about *Ghag* for his daughter and restrained him from engagement of his daughter with *Ibrahim* s/o *Naik Daraz* and also issued him threats for dire consequences. On the same night, co-accused *Naimat Ullah* and others also assaulted his son *Zain Ullah Shah* in respect whereof FIR No. 424/2023 was registered u/s 324/34 PPC with PS Cantt, District Bannu. On 20 May 2023, the petitioner alongwith co-accused *Naimat Ullah* and others met with *Naik Daraz* and restrained him from engagement of his son with daughter of the complainant, threatened him for dire consequences and demanded to cancel the engagement function which was scheduled for 21 May 2023. The engagement function was cancelled.

2. In pursuance of above FIR, the petitioner was arrested. Application for grant of post-arrest bail filed by the petitioner before learned Additional Sessions Judge-II Bannu has been dismissed *vide* order dated 29 January 2024. Application for grant of post-arrest bail filed by the petitioner before Peshawar High Court, Bannu Bench has also been dismissed *vide* order dated 14 March 2024 whereafter the instant petition has been filed by the petitioner for grant of post-arrest bail which has strongly been

opposed by learned Additional Advocate General ('AAG') and the complainant.

3. After hearing learned counsel for the petitioner, Learned AAG and the complainant, we have perused the available record and have gone through the provisions of GHAG Act 2023. Ghag has been defined u/s 2 (1)(b) of the GHAG Act, 2013 as follows: -

"2(1)(b) "Ghag" means a custom, usage, tradition or practice whereby a person forcibly demands or claims the hand of a woman, without her own or her parents' or wali's will and free consent, by making an open declaration either by words spoken or written or by visible representation or by an imputation, innuendo, or insinuation, directly or indirectly, in a locality or before public in general that the woman shall stand engaged to him or any other particular man and that no other man shall make a marriage proposal to her or marry her, threatening her parents and other relatives to refrain from giving her hand in marriage to any other person, and shall also include obstructing the marriage of such woman in any other manner pursuant to such declaration; and

Explanation.-For the purpose of this definition, ghag shall also include "awaz", "noom" or any word or phrase, denoting such declaration."

Sections 3, 4 and 5 of the GHAG Act, 2013 read as follows: -

"3. Prohibition of Ghag.---No one shall demand the hand of a woman in marriage by way of Ghag.

4. Punishment.---Whoever contravenes the provisions of section 3 shall be punishable with imprisonment of either description for a term which may extend to seven years, but shall not be less than three years, and shall also be liable to fine upto five hundred thousand rupees or both.

5. Abetment.---Any person who knowingly and willfully abets the commission of or who aids to commit or does any act preparatory to or in furtherance of the commission of an offence under section 3 of this Act, shall be guilty of that offence and shall be liable on conviction to the punishment provided for the offence under section 4.

4. On 15 July 2024, Musharraf Khan (son of the petitioner) appeared before this Court with the statement that there is prospect of settlement between the parties and he undertook that he will approach the complainant for settlement.

5. In view of the above, the matter was adjourned with notice to the complainant.

6. Today, learned AAG assisted by the complainant has placed on record minutes dated 21 July 2024 of Jirga proceedings. Contents of the same reveal that *Musharraf Khan* (son of the petitioner) did not agree with the decision of the Jirga members (in favour of the complainant) while the complainant agreed with the same due to which the Jirga members were unable to make any settlement/resolve the dispute between the parties.

8. Keeping in view the peculiar circumstances of the instant case and on the basis of tentative assessment of the material available on record, the petitioner, being *prima-facie* involved in the commission of non-bailable offences under the provisions of GHAG Act, 2013, is held not entitled for the discretionary relief of post-arrest bail.

For the above reasons, the petition is dismissed.

Judge

Judge

Islamabad
23.07.2024
Atif/Zohaib*
NOT APPROVED FOR REPORTING