

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.916 of 2020

*(Against the order dated 9.6.2020 passed by the
Peshawar High Court, D.I. Khan Bench in Cr.M.BC
No.10-D/2020)*

Muhammad Waheed

...Petitioner(s)

Versus

The State through AG KPK and another

....Respondent(s)

For the Petitioner(s): Mr. Muhammad Yousaf Khan, ASC

For the State: Mr. Anis Muhammad Shahzad (*State counsel*)
with Haq Nawaz, SI.

Date of hearing: 01.09.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Muhammad Waheed, petitioner herein, blamed for attempt to have carnal knowledge with Nemat Ullah, 7/8, at 12.00 hours on 2.12.2019 within the precincts of Police Station Daraban, District D.I. Khan, seeks revival of his bail granted by the Addl. Sessions Judge, subsequently cancelled by a learned Judge-in-Chamber of the Peshawar High Court, D.I. Khan Bench vide impugned order dated 9.6.2020.

After the assault, the child was examined same day and the Medical Officer observed a bleeding anal orifice with abrasions on the knee joint; whitish material on the clothes were forensically opined as seminal stains.

2. Learned counsel for the petitioner contends that there was no occasion for the learned High Court to cancel bail granted by a competent tribunal; according to him, freedom once granted is seldom re-called more so in the absence of compelling reasons, conspicuously missing in the case. Learned Law Officer has faithfully defended the impugned order; he contends that medical evidence unambiguously suggested commission of crime of sodomy as the bleeding rectum confirms penetration, sufficient to constitute the offence and, thus, the investigating officer manifestly ran into error by viewing the incident as mere attempt, therefore, observations,

though tentative in nature, recorded by the High Court are not open to exception.

3. Heard. Record perused.

4. Certainly it is for the trial Court to finally settle petitioner's alleged culpability and the offence made thereunder on the strength of evidence, nonetheless, available material in the given circumstances constitutes "*reasonable grounds*" within the contemplation of section 497 of the Code of Criminal Procedure 1898 so as to bring his case within the remit of prohibition provided thereunder and, thus, there was no occasion for the learned Additional Sessions Judge to release him on bail, an error justifiably rectified by the learned Judge-in-Chamber. On our own analysis, given extreme tender age of the child, trauma apparently endured by him, positively confirmed by medical evidence, we do not feel persuaded to subscribe to the parallel story of denial, structured upon complainant's alleged animosity based upon some previous litigation. Plea of juvenility though addressed at the bar does not find mention in the grounds taken before us though there is an oblique reference before the Court of Session albeit with no supporting material. Petition fails. Leave declined.

Judge

Judge

Islamabad, the

1st September, 2020

Not approved for reporting

Azmat/-