

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Naeem Akhter Afghan

Criminal Petition No.1144 of 2025
(On appeal against the order dated 26.06.2025 of the Lahore High Court, Lahore passed in CrI.Misc.No.25982-B of 2025)

Muhammad Shakeel	<u>Versus</u>	...Petitioner(s)
The State & another		...Respondent(s)
For the Petitioner(s):	Mr. Mushtaq Ahmad Mohal, ASC	
For the State:	Mr. Irfan Zia, Addl.P.G., Punjab Muhammad Saqlain, I.O.	
For the Complainant:	Mr. Khalid Masood Sandhoo, ASC	
Date of Hearing:	27.08.2025	

ORDER

Naeem Akhter Afghan, J.- The petitioner is seeking post-arrest bail under section 376 of the Pakistan Penal Code (**PPC**) in FIR No.349/2024 registered with police station (**PS**) Saddar, District Sargodha by the complainant Nasreen Bibi w/o Muhammad Bashir on 14th April 2024 with the allegation that in her absence, having gone to Malakwal, the petitioner after entering in her house entered into the room of her daughter (Maham Bashir aged about eighteen years) and forcibly committed *zina* with her daughter twice; when her daughter made hue and cry, her husband (father of the victim) sleeping on the roof top came down; in the meanwhile, their relative Nadeem s/o Aslam, passing through the street, also came inside after hearing the hue and cry; on seeing her husband and Nadeem, the petitioner came out of the room and fled; her husband informed her on phone due to which she returned and lodged the FIR.

2. Record transpires that after his arrest the petitioner was investigated. During investigation, 164 Cr.P.C. statement of the victim was recorded and she was also cross-examined by the petitioner. Medico Legal Report (**MLC**) of the victim was obtained. Vaginal swabs, blood sample,

buckle swab, stained pieces of *Shalwar Kameez* of the victim, stained pieces of bed sheet and buckle swab of the petitioner were obtained for DNA analysis by Punjab Forensic Science Agency (**PFSA**). Report of PFSA was obtained. After completion of investigation, the petitioner was remanded to the judicial custody. *Challan* was submitted on 24th December 2024 but so far, no evidence has been recorded at the trial.

3. After hearing learned counsel for the petitioner, learned counsel for the complainant and the learned Additional Prosecutor General, Punjab we have perused the available record. Though MLC of the victim and DNA Analysis Report of PFSA reveal of sexual intercourse by the petitioner with the victim but the MLC of the victim does not reveal of any marks of violence on the body of victim. It is yet to be determined at the trial as to whether the sexual intercourse was with consent of the victim or it was forcible.

4. According to 164 Cr.P.C. statement of the victim she alongwith her father went to the police station but surprisingly neither victim nor her father got registered FIR and same was registered by the mother of the victim who admittedly was not present in the house at the time of the alleged occurrence.

5. In her 164 Cr.P.C. statement the victim has not explained as to how the petitioner, being her first cousin, forcibly committed *zina* with her twice when her father was present in the house/sleeping on the roof top and as to how her relative Nadeem entered in the house while passing through the street. The pleas raised and put to the victim by the petitioner during cross-examination to her 164 Cr.P.C. statement also makes out a case of further inquiry.

6. On the basis of tentative assessment of the material so far available on record, the case against the petitioner falls within the ambit of further inquiry.

7. The petitioner being in judicial custody is no more required for any further investigation or probe. Despite submission of *challan* in December 2024, till date the statement of victim and the prosecution witnesses have not been recorded and in this regard no plausible explanation has been offered by the prosecution. According to settled principles of law, bail cannot be withheld as mere punishment.

8. For the above reasons, while granting leave, the petition is converted into appeal and same is accepted. The petitioner is granted post-arrest bail under section 376 of the PPC in FIR No.349/2024 of PS Saddar, District Sargodha subject to his furnishing bail bonds in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) with one surety in the like amount to the satisfaction of the trial court.

9. The observations made hereinabove are tentative in nature and same shall not influence merits of the case at the trial.

Judge

Judge

Islamabad

27th August 2025

Atif/-

APPROVED FOR REPORTING