

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
BANNU BENCH.**

*(Judicial Department)*

**Cr. Misc: B.A No. 16/2024.**

**Muhammad Junaid Shah**

**Vs**

**The State and another.**

**JUDGMENT**

Date of hearing 22.01.2024.

For petitioner:- Mr. Masood Iqbal Khattak,  
Advocate.

For State:- Hafiz Muhammad Hanif, AAG.

For respondent:- Mr. Muhammad Ishaq Khattak,  
Advocate.

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② **FAZAL SUBHAN, J.-** Through instant petition, the petitioner namely, Muhammad Junaid Shah son of Roshan Gul seeks his post arrest in case FIR No.324 dated 06.02.2023 registered under sections 377/376/... PPC/43/48/53 Child Protection and Welfare Act, 2010 of police station Banda Daud Shah, District Karak.

2. Record transpires that the complainant Fahad Ihsan initially lodged Naqal Mad No.25 on 28.10.2023 in respect of firing upon him for criminal intimidation,

preparing naked video for the purpose of blackmailing and thereafter repeatedly committing sodomy with him, against the petitioner Muhammad Junaid Shah and after legal opinion the present case FIR was lodged against him. It was reported that complainant had friendship with the petitioner and on 13.02.2023, he took him to nearby mountains and on gun point, his trouser was removed and his obscene video was prepared and threatened to upload the video on social media in case of disclosure to any one and after blackmail through said video, the petitioner committed forcible unnatural offence with him for 12/13 times. After uploading the video, his family member got knowledge of the offence, whereafter it was secured in USB, hence he lodged the report of commission of unnatural offence against the petitioner.

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3. With this background of the case arguments of learned counsel for the parties and that of learned AAG for the State heard and record was tentatively considered.

4. From the available record it is clear that though there is a delay of about 7/8 months in reporting the matter to the local police, however, delay in such like matter is immaterial for the reason that allegedly the petitioner used to blackmail the complainant for uploading his video on social medial which forced him to surrender to his demands for

unnatural offences and once he refused to bow down to the demands of the petitioner, he made the video viral on social medial and the same was secured through USB. It is also perceivable that a minor who has faced trauma due to an immoral act, try not only to conceal but keep silent due to shame and disgrace in the society, hence delay in lodging the report in cases pertaining to sodomy or rape could not be considered a material aspect to dislodge the contention of a victim, if other materials are available on record to support the prosecution version. To fortify my above arguments, reliance can safely be placed on the judgment of “Zahid and another-Vs-The State” reported in (2020 SCMR 590), wherein plea of delay taken in the petition was discarded and petition for leave to appeal was dismissed with the following observations:-

“ Undoubtedly, the FIR was registered after a day of the crime having been committed, however, the fact that the modesty of a married woman was violated by sexual assault makes understand the apprehension of the victim and her family in approaching the police immediately. Delay in reporting the crime to the police in respect of an offence involving a person’s honour and reputation and which society may view unsympathetically could prey on the minds of a victim and her family and deter them to go to the police.”

Similarly, in the case of "Muhammad Sajid alias Sajo-Vs-State and others" reported in (PLJ 2022 Criminal Case 737) the Hon'ble Lahore High Court, Lahore while discussing the amendment brought in the Penal Code, 1860 in respect of insertion of sections 377-A and 377-B have observed that:-

"Let's now turn to the case in hand. At the very outset, it is observed that the petitioner is nominated in the FIR with specific allegations. It is true that the Complainant approached the police seven days after the happening but an adverse inference cannot be drawn against her on that score at the bail stage because in our society the people generally do not report such incident immediately. The overall impact of the delay, if any, is to be determined by the Court on the conclusion of the trial when the testimony of all the witnesses is recorded and they are duly cross-examined."

5. The mobile through which video of the complainant was prepared was recovered on pointation of petitioner while pistol 30 bore bearing No.91106 with fix charger having 5 live rounds of the same bore was also recovered and taken on recovery memo. Record shows that the petitioner is a young man of 22/23 years while the complainant is of tender age of 14/15 years, who was forcibly and on gun point forced for sexual abuse. The offence is not only one of moral turpitude but a crime against the society as a whole. Moreso, by putting a minor in state of

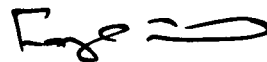
fear and anguish would go with him for the whole of his life and would be a night mare but would also be a cause of disrespect and dishonor for him to the rest of his life, hence such offences cannot be let to be treated causally. To protect child from abuse the Child Protection and Welfare Act, 2010 (Act) has been promulgated. Section 377 PPC provides maximum punishment for life, whereas section 53 of the ibid Act for "sexual abuse" defined in section 2(y) of the Act, for 10 years imprisonment, hence these offences falls within the prohibitory clause of section 497 Cr.P.C.

6. For all the above reasons and the fact that petitioner is not only directly charged in the FIR but there is also sufficient material on record to connect him with the offence charged for, hence the petitioner has failed to make out a case for grant of bail, resultantly, the instant petition is dismissed.

**Announced.**

**22.01.2024.**

Ihsan.\*/-



**J U D G E.**

(S.B)

Hon'ble Mr. Justice Fazal Subhan.

*File*  
*26/1/2024*  
26 JAN 2024  
*Wah*