

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

Cr.MBC No.25-D/2018

Waris Khan

Versus

Khasadar alias Tor Khan and another

JUDGMENT

Date of hearing 05.4.2018

Petitioner by: Mr. Salimullah Khan Ranazai, Advocate

Respondents by: Muhammad Wahid Anjum, Advocate and
Mr. Kamran Hayat Miankhel, Addl: A.G.

—

ISHTIAQ IBRAHIM, J.- Through the instant petition under section 497(5) read with section 561-A Cr.P.C, the petitioner Waris Khan has impugned the order dated 04.11.2017 of learned Additional Sessions Judge-IV, D.I.Khan, whereby respondent No.1 was admitted to bail in case FIR No.240 dated 25.10.2017 registered under section 496-A PPC at police station Band Kurai, D.I.Khan and order dated 16.01.2018 of learned Additional Sessions Judge Paharpur (D.I.Khan), whereby pre-arrest bail granted to the respondent in respect of newly added section 376 PPC was confirmed and seeks cancellation of bail granted to the respondent.

2. The facts giving rise to the instant petition, in brief, are that Waris Khan complainant moved an

application to the local police on 22.10.2017 alleging that on the night of 05.10.2017, his daughter Mst. Mobeen Bibi left the house and despite search, could not be found. The report of the complainant was entered in daily diary and inquiry under section 157(i) Cr.P.C was conducted. On 25.10.2017, the complainant recorded his supplementary statement, wherein he charged respondent No.1 for commission of offence, hence FIR No.240 dated 25.10.2017 was registered under section 496-A PPC at police station Band Kurai, D.I.Khan.

3. After his arrest, the petitioner moved bail application which was allowed by learned Additional Sessions Judge-IV, D.I.Khan vide order dated 04.11.2017. Mst. Mobeen Bibi was recovered and she recorded her statement under section 164 Cr.P.C on 26.10.2017 before learned Judicial Magistrate, Paharpur, prior to the release of respondent on bail on 04.11.2017. After release of respondent No.1 on bail, section 376 PPC was added in the FIR. Respondent No.1 applied for pre-arrest bail which was confirmed vide order dated 16.01.2018.

4. Arguments heard and record perused.

5. It is a matter of record that section 376 PPC was added by the prosecution subsequently to further aggravate the agony of respondent No.1. It is by now settled that whenever a Court orders that an accused person in a particular FIR be released on bail, the order necessarily pertains to that particular FIR in its entirety. Reliance in this respect is placed on the case of **Amanat Ali. Vs. The State (PLJ 1980 Cr.C Lahore 432)** wherein it has been held that:-

“It is the allegations which are important to determine the character of offence and not the reference to section or an Ordinance by the Moharrir Head Constable who writes down the same in the FIR. It is to be noticed that recorder of the FIR is not even an Investigating Officer. The person recording the FIR cannot be deemed to possess the powers to put down any section or Ordinance which he likes though that may change the channel of trial and lead to ouster of jurisdiction of superior Courts.”

Reliance can also be placed on the case of **Mst. Shahida Parveen. Vs. The State and another (1995 MLD 1082).**

6. It is not out of place to mention here that normally an accused, who has already been granted bail, is re-arrested by a police officer on the ground that new section of law has been levelled against him, which is

against the mandate of law. Chapter XXVI, Rule 21(6) of Police Rules, 1934 clearly provide that no person can be re-arrested without the formal orders of a competent Court obtained through the bail cancellation as provided under section 497(5) Cr.P.C. For convenience, rule 21(6) of Police Rules, 1934 is reproduced as under:-

“No Police Officer has power to re-arrest an accused person who has been released on bail under section 497, Code of Criminal Procedure. When re-arrest is deemed necessary, the police shall apply to a competent Court for the cancellation of the bail bond and the issue of a warrant in accordance with the provisions of Section 497(5), Code of Criminal Procedure.”

7. This fact cannot be denied that when the bail application of respondent No.1 was heard by learned Additional Sessions Judge, the entire material was available before him including statement of the abductee recorded under section 164 Cr.P.C and the bail granting order was passed strictly in accordance with the principles laid down for disposal of bail application. Moreover, there is no allegation against respondent No.1 that after his release on bail, he misused the concession by repeating the offence or tampering with the prosecution evidence. The learned counsel for the

petitioner failed to make out a case for cancellation of bail granted to respondent No.1.

8. For the reasons mentioned above, the instant petition being bereft of merit and substance is hereby dismissed.

Announced.
Dt:05.4.2018.
Habib/*

JUDGE

(SB)
Hon'ble Mr. Justice Ishtiaq Ibrahim