SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction**]**

PRESENT:
Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Criminal Revision No.14 of 2015
(Filed on 16.12.2015)

Muhammad Waqas s/o Muhammad Bashir Caste Sohlen r/o Nalah Chamber Basiry, Tehsil Nasirabad, District Muzaffarabad.

……PETITIONER

VERSUS

1. Babar s/o Yaqoob Sheikh,
2. Khurshid s/o Abdul Ghaffar Caste, Sheikh r/o Muslim Colony Kachi Abadi Islamabad Pakistan.

…..RESPONDENTS

3. State through Advocate-General of Azad Jammu & Kashmir.

[Revision petition from the judgment of the Shariat Court dated 17.11.2015 in Revision Petition No.383/2015]

FOR THE PETITIONER: Mr. Muzaffar Hussain Mughal, Advocate.

FOR THE RESPONDENTS: Mr. Raza Ali Khan, Advocate.

FOR THE STATE: Ch. Shoukat Aziz, Additional Advocate-General.

JUDGMENT:

Mohammad Azam Khan, C.J.– The above titled revision petition arises out of the judgment of the Shariat Court of Azad Jammu & Kashmir dated 17th November, 2015, whereby while accepting the revision petition filed by the respondents from the judgment of the Additional District Criminal Court Patika dated 28th October, 2015, they have been released on bail under sections 10, 11 and 19, of the offence of Zina (Enforcement of Hadood) Act, 1985 (ZHA), read with section 14 of the offences against Property (Enforcement of Hadood) Act, 1985, (EHA).

2. The petitioner, herein, Waqas Bashir s/o Muhammad Bashir, on 18th September, 2015 lodged a written report at 5:45 a.m. at police station Kahori against Muhammad Khurshid s/o Abdul Ghaffar, caste

Sheikh, resident of Muslim Colony Kachi Abadi Noorpur Islamabad, Mst. Saiqa and Mst. Sadaf, daughters of Muhammad Bashir, residents of Nalah Chamber Bhairi. It was stated in the report that he is resident of Chamber Bhairi. On 13th September, 2015 at 9:00 a.m. his two sisters, Saiqa and Sadaf, suddenly found disappeared from the home. He filed a report to this effect on 15th September, 2015, at Police Chowki Nasirabad. He kept on searching them. Today, he has gained the information that Muhammad Khurshid s/o Abdul Ghaffar, Caste Sheikh, resident of Kachi Abadi Noorupur, Islamabad with the abetment and conspiracy of other unknown persons, has abducted his sisters for the purpose of committing Zina at some unknown place. On search, the gold ornaments weighing 22 *tola* and cash amount of Rs.80,000/- were found missing from the house which allegedly they have stolen. He requested for registration of the case. On this report, a case in the offences under sections 10, 11 and 19 ZHA read with section 14 EHA, was registered at police Station Kahori. During the course of investigation, the

accused were apprehended and after being arrested they filed application for grant of bail which was dismissed on 10th October, 2015, by the Tehsil Criminal Court Nasirabad/Patika. Thereafter, the accused-respondents filed the application for release on bail before the Additional District Criminal Court Patika on 19th October, 2015. The Additional District Criminal Court Nasirabad/Patika through judgment dated 28th October, 2015, dismissed the application. The accused-respondents filed a revision petition in the Azad Jammu & Kashmir Shariat Court. The learned Chief Justice of the Shariat Court through the impugned judgment dated 17th November, 2015, released the accused-respondents on bail, hence this revision petition.

3. Mr. Muzaffar Hussain Mughal, Advocate, counsel for the petitioner, submitted that the judgment of the Shariat Court is against law and the record. The accused-respondents have abducted two young girls from their house for the purpose of committing Zina. The statements of both the girls under section 164, Cr.P.C. have been reordered before the Magistrate 1st

Class, Patika, wherein, they specifically alleged that they were forcibly abducted by the accused-respondents and the accused have prepared fabricated *Nikahnamas* in order to avoid the criminal liability. The prosecution has collected sufficient material against the accused-respondents through which they are fully connected with the commission of offence. The learned Shariat Court has incorrectly observed that the case against the accused-respondents is one of further inquiry. No case of further inquiry is made out from the facts of the case. The learned counsel submitted that the Shariat Court has delivered the judgment in a telegraphic manner. The learned counsel referred to the cases reported as [PLD 1968 SC 621] and [2007 SCMR 244].

4. While controverting the arguments, Mr. Raza Ali Khan, Advocate, counsel for the accused-respondents submitted that the judgment of the Shariat Court is perfectly legal. Both the girls are *sui-juris*. They have contracted the marriage with the accused-respondents at their own free will. No offence of abduction took place. Both the girls went to Islamabad

at their own free will and have contracted the marriage with the accused-respondents. He referred to the *Nikahnamas* and affidavit sworn by the girls. The learned counsel further submitted that both the alleged abductees have filed the suits for jectitation of marriage which is the proof of the fact that they have contracted marriage. Thereafter, on the instigation of their family they have filed the suits for jectition of marriage. He submitted that when the questions of legality of marriage and Nikah are subjudice before the Civil Court then the matter becomes one of further inquiry and in such circumstances the grant of bail becomes a right of the accused. He submitted that it is not the case of the grant of bail rather it is case of cancellation of bail and the grounds for cancellation of bail are altogether different from the grant of bail. When the bail is granted by a Court of competent jurisdiction, very strong grounds are required for its cancellation. If an order is found arbitrary, capricious and against the settled principles governing the bail matter then this Court may interfere with such bail granting order, otherwise it

seldom interfere in the matter of bail. He requested for dismissal of the revision petition.

5. Ch. Shoukat Aziz, Additional Advocate-General submitted that *prima-facie* the accused-respondents are connected with the crime. Their case does not fall within the ambit of further inquiry. The accused are not entitled for concession of bail. The Shairat Court has wrongly released the accused on bail. He requested for cancellation of bail granted to the accused respondents.

6. We have heard the learned counsel for the parties as well as the Additional Advocate-General and perused the record.

7. In a written report, the complainant alleged that his two sisters Saiqa and Saddaf found disappeared from the house. Later on, it was known that Muhammad Khurshid s/o Abdul Ghaffar one of the accused-respondents has abducted them for the purpose of committing Zina. During the course of investigation, both the accused-respondents were arrested and the

abductees were recovered. The accused have taken the plea that they have not abducted the girls. They have voluntarily come to Islamabad and have contracted marriage with them at their own free will. They have produced *Nikahnamas*, allegedly fabricated by them. The contents of *Nikahnamas* reveal that both the accused are shown to be the residents of Islamabad and Rawalpindi and Nikah took place in Afandi Colony, Ward No.26 at Rawalpindi. Both the girls are shown to be the residents of village Chamber Bhairi, Tehsil and District Muzaffarabad. None of the relatives of the girls is shown to be present at the time of Nikah. Both the accused are the witnesses of the Nikah of each other and two persons; one Aftab Hussain s/o Alam Hussain resident of Shahzad Colony, Tehsil and District Rawalpindi and the other Liaquat Ali son of Ameer Ali, resident of Pir-wadahi Fouji Colony, Tehsil and District Rawalpindi, are witnesses of the Nikah. There are affidavits allegedly sworn by the girls on 14th September, 2015 that they have contracted the marriage with the accused-respondents at their own and no one

has abducted them. The complainant alleged that his sisters disappeared from the house on 13th September, 2015. The Nikah is shown to be solemnized on 14th September, 2015. The affidavits have also shown to be sworn on 14th September, 2015. Conversely, the prosecution has brought on record the statements of the abductees recorded under section 164 Cr.P.C. by the Magistrate 1st Class, Patika. Mst. Saiqa in her statement stated that she is resident of Chamber Bhairi. She and her sister Saddaf Bibi, were abducted by Khrurshid s/o Abdul Ghaffar on 13th September, 2015, who also took away the gold ornaments weighing 22 *tola* and cash amount of Rs.80,000/-. Her father was in Karachi at the time of alleged abduction. Both the sisters were at home. Their mother had gone to see some of their relative. Khurshid took them in a corolla car. Two other persons were also accompanying him. The accused got them unconscious by using some intoxicant. On getting consciousness they acquired knowledge that they are at Rawalpindi. Khurshid and Babar threatened them to do away with lives while pointing the pistol at us. They

forcibly committed Zina with us and they were recovered by the Police on 20th September, 2015. She further stated that they got affixed their thumb impression on some papers and also their signatures. They have never contracted Nikah with anybody.

8. Under section 497, Cr.P.C. when any person accused of non-bailable offence is arrested or detained he may be released on bail but he shall not be so released if there appears reasonable grounds to believe that he is guilty of the offence punishable with death or imprisonment for life, the case against such accused appears to be one of further inquiry. At bail stage only a tentative assessment of the material brought on record, i.e. the FIR, the statements of the witnesses recorded under section 161, Cr.P.C., medico legal report if any and of-course the version of the accused if put forth, have to be considered. Deeper appreciation of the evidence is not permissible and in case of zina, the statement of the prosecutrix is sufficient for decision of the bail matter. For deciding the question of bail in the case where the accused took a specific plea that the

accused has contracted marriage with the lady and the lady accepted the position, in such circumstances the case against the accused becomes one of further inquiry and once a bail is granted by a Court of competent jurisdiction then very strong grounds are required for cancellation of bail but the case in hand where only the accused have claimed that they have contracted marriage with the abductees and the ladies have got recorded statements under section 164, Cr.P.C. wherein they specifically alleged that they were abducted by the accused-respondents and they have been subjected to Zina. They have not contracted marriage with any person and they remained in illegal custody of the accused-respondents. They further alleged that during this period of custody, the accused-respondents have got affixed their signatures and thumb impression on some papers. In such circumstances, the accused *prima facie* appear to be connected with the crime. No case of further inquiry appears to be made out by the accused persons. The Shariat Court failed to appreciate the

record in a correct manner. The judgment of the Shariat Court is not maintainable.

The result of the above discussion is that the revision petition is accepted. The judgment of the Shariat Court is set aside. The bail granted by the Shariat Court is cancelled. The accused shall be taken into custody. They may renew the bail application after recording of some evidence. The trial Court is directed to complete the trial within a period of 3 months after the receipt of judgment of this Court.

CHIEF JUSTICE **JUDGE**

Muzaffarabad.
09.05.2016.