

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Revisional Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Criminal Revision No.4 of 2017
(Filed on 01.03.2017)

Muhammad Javed son of Akber Din, caste
Megrian, r/o Dhal Qazian, Post Office, Tehsil
and District Bagh.

....PETITIONER

VERSUS

1. Easa Khan son of Gull Hussain Khan, caste
Maldial, r/o Kharal Maldialan, Tehsil and
District Bagh.
2. Kiran Javed wife of Muhammad Nasir, r/o
Dhal Qazian, Tehsil and District Bagh.

....ACCUSED-RESPONDENTS

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

..... PROFORMA RESPONDENT

(On revision petition from the judgment of the Shariat Court dated 02.02.2017 in reference No.459 of 2016)

FOR THE PETITIONER: Mr.Fiaz Ahmed Janjua,
Advocate.

FOR THE ACCUSED-RESPONDENTS: Sardar M.R. Khan,
Advocate.

FOR THE STATE: Raja Akhlaq Hussain
Kiani, Addl. Advocate
General.

Date of hearing: 17.05.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The tiled revision petition has been filed against the judgment of the Shariat Court dated 02.02.2017, whereby, while answering the reference sent by the District Court of Criminal Jurisdiction, Bagh it has been held that the accused-respondents, herein, are entitled to be released on bail.

2. The facts in brief are that the petitioner, herein, moved an application to the Police Station Bagh that his daughter,

respondent No.2, herein, went to the Post Graduate College, Bagh on 15.11.2016 to appear in the examination but did not return to home. It was stated that today it came to the knowledge of the petitioner that the accused, Nasir, abducted her with the connivance of Muhammad Rashid, Khalid, Easa Khan and Muhmmad Bilal to commit the offence of Zina. On the aforesaid application, a case under sections 341, 452 and 506, APC read with sections 10,11,15,16,18 and 19 Zina (Enforcement of Hadood) Act, 1985, was registered. After registration of the case, the accused persons filed applications for grant of pre-arrest bail in the District Court of Criminal Jurisdiction, Bagh. The learned District Court of Criminal Jurisdiction, Bagh rejected the application to the extent of the accused Nasir and confirmed the pre-arrest concession of bail granted to the accused Abdul Rashid. To the

extent of other accused, difference of opinion between the members of the Court arose, whereupon, a reference to the learned Shariat Court was sent. The learned Shariat Court while agreeing with the conclusion drawn by the learned Sessions Judge, Bagh confirmed the pre-arrest bail of the other accused. Hence, this revision petition.

3. Mr. Fiaz Ahmed Janjua, Advocate, the learned counsel for the complainant-petitioner argued that the learned Shariat Court while releasing the accused on bail failed to exercise the discretion in a judicious manner. He added that the learned Shariat Court failed to adhere to the fact that the accused committed a heinous offence and are not entitled to the concession of pre-arrest bail. He contended that the learned Shariat Court has also not adhered to the relevant provisions of law while extending the relief to the accused-

respondent. He added that bail before arrest is an extraordinary relief which cannot be extended to the persons involved in the heinous offences. He further contended that the learned Shariat Court extended the extraordinary relief to accused-respondent No.1, mere on the ground that he is an old age person, whereas, under law old age cannot be made a ground to extend any such relief. He added that the abductee is playing in the hands of accused persons and she was compelled to enter into the contract of marriage without consent of her parents. In this way, the custom/tradition of the society has been violated. He forcefully contended that confirmation of the bail before arrest in such like cases amounts to encourage the persons who involved in such like offences. He added that the element of illegal harassment and ulterior motive are pre-requisite to invoke

the jurisdiction of pre-arrest bail, whereas, no such elements are available in the case in hand.

4. On the other hand, Sardar M.R. Khan, Advocate, the learned counsel for the accused-respondents strongly opposed the arguments advanced by the learned counsel for the complainant-petitioner. He submitted that no illegality has been committed by the learned Shariat Court while passing the impugned judgment. The abductee herself stated that no one has abducted her rather she left the house of her parents with her own sweet-will. Moreover, under the Muslim Family Laws, being major/sui juris she has the right to enter into the contract of marriage with her free will. He strongly argued that no cognizable offence is made out against the accused-respondents. He added that there was ulterior motive behind the registration of the case and on the

strength of the same the police has created illegal harassment. Thus, in such circumstances the learned Shariat Court has rightly exercised the powers while holding that the accused-respondents are entitled to be released on bail. He further added that the age of accused-respondent No.1 is more than 70 years who has been roped in the case just on the ground that he is the father of person who solemnized marriage with the alleged abductee. In this way, the learned Shariat Court has not committed any illegality while passing the impugned judgment which is not open for interference by this Court.

5. Raja Akhlaq Hussain Kiani, the learned Additional Advocate-General adopted the arguments advanced by the learned counsel for the petitioner.

6. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned judgment. The allegation levelled against the accused-respondent No.1, is that he along with other accused persons abducted respondent No.2, for committing Zina. The alleged abductee was present in the Court at the time of hearing the case and she was called on the rostrum to enquire about her age. She categorically stated that her age is 23 years and she contracted marriage with the son of accused-respondent No.1, with her sweet-will and nobody abducted her. There is no other claimant that the alleged abductee had already entered into the contract of marriage with him. The alleged abductee is sensible and major enough to contract the marriage with her sweet will. At this stage, the statement of lady was most important, who

does not make any sort of allegation against the accused persons rather she stated that no one abducted her and she contracted marriage with her own free will. Accused-respondent No.1, herein, is an old man of more than 70 years age and prima facie he has been roped in the case mere on the ground that he is the father of the accused who contracted marriage with the alleged abductee. In such state of affairs, the learned Shariat Court has rightly extended the concession of bail to the accused-respondents. From the facts of the case prima facie it appears that the elements of illegal harassment and ulterior motive are very much present in the instant case, which are pre-requisite for grant of pre-arrest bail. Thus, we do not find out any illegality or perversity in the order passed by the Shariat Court which is not open for interference by this Court.

In view of the above finding no force
this revision petition stands dismissed.

Mirpur, **JUDGE** **CHIEF JUSTICE**
___.05.2017

Date of Announcement 30-05-2017