

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Shariat Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE KHAWAJA M. NASIM  
MR. JUSTICE RAZA ALI KHAN

**CRIM. APPEAL No. 19 OF 2024**

Crim. Misc. No. 18 of 2024

(Against the judgment  
dated 29.02.2024,  
passed by the Shariat  
Appellate Bench of the  
High Court, in Crim.  
Revision No. 32 of 2024)

Raja Liaqat Ali Khan s/o Mir Afzal Khan, caste Tazyal r/o  
Sabohat Tehsil Dheerkot District Bagh, presently detained  
in Police Station Dheerkot.

...Appellant

**VERSUS**

The State through Advocate-General of Azad Jammu and  
Kashmir, Muzaffarabad and another.

...Respondents

**Appearances:**

For the Appellant: Raja Shujaat Ali Khan, Advocate.

For the State: Raja Mazhar Waheed Khan, Addl. Advocate-General.

For Respondent No. 2: Raja M. Shafique Shahid Advocate.

Date of hearing: 02.05.2024

**JUDGMENT:**

**Raza Ali Khan, J:-** This appeal stems from the judgment of the Shariat Appellate Bench of the High Court (hereinafter to be referred as High Court), dated 29.02.2024, whereby, the revision petition filed by the appellant, herein, has been dismissed.

2. The concise narrative of the case outlines that the accused-appellant was implicated in charges under sections 11/16 of the ZHA, 494/114, and 34 of the APC. Following requisite investigation, the accused-appellant was apprehended by police. Subsequently, on January 20, 2024, he filed a post-arrest bail petition before the Tehsil Court of Criminal Jurisdiction, Dhirkot. Upon due deliberation, the trial court, by order dated January 24, 2024, denied the bail petition. Dissatisfied, the accused-appellant then pursued a second bail application before the Additional District Court of Criminal Jurisdiction, Dhirkot, on January 25, 2024, which was again rejected vide order dated January 30, 2024. Dissatisfied with this outcome, the appellant lodged a revision petition before the High Court. However, in its order dated February 29, 2024, the erudite High Court likewise dismissed the revision petition.

3. Raja Shujaat Ali Khan, the learned Advocate representing the accused-appellant, contended that the contested rulings of the lower Courts contradict established legal principles, the factual narrative, and the evidentiary

record of the case. He argued that the appellant was detained by the police for a period of 15 days, during which the investigation was purportedly concluded, rendering his continued custody unnecessary. Moreover, he asserted that the accusations against the appellant lack substance and are the product of falsehoods, suggesting his wrongful implication in the matter. The case, in his view, warrants further scrutiny. He further contended that, as per the prosecution's version, the appellant allegedly enticed the complainant's wife, yet she was subsequently found in a shelter home, indicating a discrepancy in the accusations. He maintained that the decisions rendered by all the lower Courts lacked judicial discretion, thus urging for their annulment and the release of the accused-appellant on bail. To bolster his arguments, the learned counsel for the appellant cited the precedent set forth in the case of *Muhammad Fareed vs. The State and another*, [2019 SCR 874]. He finally prayed for grant of bai.

4. On the contrary, Raja Mazhar Waheed, the learned Additional Advocate-General, and Raja M. Shafique Shahid, the learned Advocate representing respondent No. 2, contended that the impugned orders issued by the lower Courts adhere rigorously to legal principles, the factual matrix, and the evidentiary record of the case. They asserted that the offenses delineated in the FIR are of a grave nature, thus rendering it inequitable to grant bail to the appellant in the interest of justice. Furthermore, they maintained that the appellant is deeply embroiled in the commission of the offenses and is prominently named in the FIR, thereby precluding the necessity for further inquiry. To substantiate their assertions, the learned Advocate representing respondent

No. 2 cited cases titled *Zahid Mehmood vs. The State and others*, [2022 SCR 1362], *Muhammad Aslam vs. The State* [2023 SCMR 2056], and *Muhammad Hanif vs. The State* [2023 SCMR 2016].

5. Having heard the arguments presented by the learned counsel for both parties and carefully reviewed the case record at our disposal, it is well-established that this Court typically refrains from intervening in decisions made by the High Court regarding the granting or denial of bail to the accused. However, it is incumbent upon the Courts, when adjudicating bail matters, to exercise their discretion with prudence, vigilance, and strict adherence to the fundamental principles articulated in numerous precedents by this Court on the subject. The assessment of whether a case warrants bail necessitates the delicate balancing of various factors, including the gravity of the offense, the potential severity of the punishment, and a preliminary assessment of the accused's involvement. There is no fixed formula for Courts to evaluate bail applications; the Court is not obliged to conduct an exhaustive examination of the evidence to conclusively establish the accused's guilt beyond a reasonable doubt. It is a settled principle of law that at bail stage the deeper appreciation of the evidence is not permissible, only a tentative assessment can be made. The Court has to form the opinion on the basis of allegations levelled in the FIR and the Statements of the witnesses recorded under section 161 Cr.PC. This Court in the case reported as *Zahid Mehmood vs. The State and others*<sup>1</sup>, wherein it has been held as under: -

“According to the settled principle of law that at bail stage the deeper appreciation of the

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<sup>1</sup> [2022 SCR 1362]

evidence is not permissible rather the Court has to form the opinion based on allegation levelled in the FIR , the statement of witnesses recorded under section 161, Cr.PC and the medical report.”

6. Now, we must ascertain whether the present case aligns with the aforementioned conditions/circumstances. According to the prosecution's account and the allegations outlined in the FIR, the accused-appellant purportedly lured the complainant's wife and contracted a Nikah with her in Rawalpindi, despite an existing marriage. This assertion finds support in the statement of Mst. Musarat Nazir (the victim), recorded under section 161 CrPC, alleging that the accused-appellant engaged in illicit relations with her on two occasions and forcibly contracted a Nikah, although the medical report revealed no evidence of sexual intercourse with the accused lady. Additionally, it's noteworthy that the victim was not recovered from the appellant; rather, she was found at a shelter home/Darul-Aman. The counsel for the appellant contends that the complainant divorced the lady eight months prior to the incident, and subsequently, she willingly entered into a Nikah and underwent a marriage ceremony with the appellant. However, the respondents' counsel vehemently opposes this assertion, claiming that the respondent never divorced her. Given this conflicting narrative, the determination of whether she was indeed divorced and whether she was enticed by the appellant or acted of her own volition can only be established through the recording of evidence and trial proceedings. Moreover, since the police investigation has concluded and no further investigation is warranted and prima-facie analysis of entire evidence does not justify further incarceration of the accused nor is going to achieve any significant purpose. The

counsel for the appellant aptly relies on the precedent set forth in the case reported as *Muhammad Fareed vs. The State & another*<sup>2</sup>, wherein, the identical situation arose before the Court and the accused-appellant was enlarged on bail. The relevant portion of the judgment is reproduced hereunder for better appreciation: -

“7. The burning argument of the counsel for the complainant and the Assistant Advocate-General is that trial is in progress, therefore, the accused-petitioner may not be extended the concession of bail at this stage. It may be observed that the commencement of trial does not debar to release an accused person on bail, if he is so entitled. The petitioner is behind the bars for more than four months and is not required for further investigation. In such scenario, no useful purpose shall be served while keeping the accused-petitioner in jail for indefinite time. The validity of the statement recorded under section 164, Cr.P.C., and the report of DNA/medical report shall be determined by the trial Court, as this Court cannot wear the robe of the trial Court.”

07. Having regard to overall facts and circumstances of the case and keeping in view the nature of offence, evidence so collected, submission of the learned counsel for the parties and without expressing any opinion on merit of the case, we are of the considered view that the appellant has made out a case of bail within the purview of section 497(2), Cr.PC, however, the observations made hereinabove by this Court are only for the purpose of disposal of the instant bail matter and shall not be construed as an expression by this Court on merits of the case.

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<sup>2</sup> [2019 SCR 874]

08. In view of the above, while accepting this appeal, by setting-aside the judgment of the High Court, the accused-appellant is hereby ordered to be released on bail provided he furnishes bail bond of Rs. 50,000/- along-with surety of like amount. He shall be released forthwith, if not required in any other case.

**JUDGE**

**JUDGE**

Muzaffarabad,  
03.05.2024

