

ORDER SHEET**IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)****Case No. Crl. Misc. No.63668-B of 2024***Waseem***Versus***The State and another*

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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28.10.2024

Ch. Zulqarnain Baryar, Advocate for petitioner.
Ms. Tahira Yasmeen, District Public Prosecutor with
Sumaira Bashir Inspector.
Complainant in person.

This is a petition that has been filed under Section 497 Cr.P.C. by Waseem (**accused/petitioner**) seeking post arrest bail in case FIR No.381 of 2024 dated 11.08.2024 registered at Police Station Noor Kot, District Narowal for the offences under Sections 376(iii)/511 of Pakistan Penal Code, 1860 (“**PPC**”). Earlier application of the petitioner for the same relief was dismissed by learned Additional Sessions Judge, Narowal vide order dated 09.09.2024.

2. Allegation, in a nutshell, against accused/petitioner is that he attempted to commit sodomy with the minor son (aged 13 years) of the complainant.

3. Having heard learned counsel for the petitioner, learned DPP and upon tentative assessment of the material available on the record, it has been straightaway noticed that accused/petitioner is named in the FIR with specific role of making an attempt to commit sodomy with minor son of complainant. Learned counsel for the accused/petitioner submitted that allegation so raised against the accused/petitioner is not supported by any medical evidence, therefore, he

is entitled to grant of bail particularly where allegation against him was merely an attempt to commit sodomy. This stance of learned counsel for the accused/petitioner is simply misconceived and is not tenable for the reason that the act of sodomy has not been alleged to have completed as merely an allegation of attempt of sodomy has been raised against the accused/petitioner. As per contents of the F.I.R., the victim was rescued after raising an uproar, which drew the attention of the PWs at the spot. It may further be seen that section 377A of PPC has been introduced in the PPC through Criminal Law (Second Amendment), Act 2016 which contemplates the offense of "sexual abuse," punishable under Section 377B of PPC. Before delving into the theme, scope and extent of provisions of section 377A of PPC, it seems apt to have a glance at the provisions of section 377A & 377B of PPC, same are reproduced hereunder for the facility of ready reference:-

“377A. Sexual abuse.—Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

377B. Punishment. Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.”

Plain reading of provisions of section 377A of PPC reflects that the term ‘sexual abuse’ does not

explicitly contemplate commission or consummation of rape or sodomy with the victims below the age of 18 years. This distinction appears to be appropriate for the reason that the moment an act of rape is alleged to have been committed with a minor below the age of 16 years the matter would come out of the domain of section 377A of PPC and fall squarely under the provisions of section 376(3) of PPC entailing the more stringent punishment of death or imprisonment for life or fine. The term "sexual abuse," as outlined in section 377A of the PPC, has a broader and more comprehensive definition than simply referring to 'an attempt to commit an act of sodomy or rape' as it includes certain acts and behaviors leading to any obscene or sexually explicit conduct either independently or in conjunction with other acts with or without consent of a victim below the age of 18 years. As per provisions of section 377A of PPC, an act of employing, using, forcing, persuading, inducing, enticing or coercing any person to engage in fondling, stroking and caressing any obscene or sexual explicit conduct either independently or in conjunction with other acts with or without consent of a victim less than 18 years would be considered and counted as the crime of sexual abuse as punishable under section 377B of the PPC entailing minimum sentence of fourteen years that may extend up to twenty years with fine which shall not be less than one million rupees. In case "*Mubeen Ahmed v. The State and another*" (PLD 2021 **Islamabad 431**), it has been observed that the provisions of section 337A and 377B of PPC have been incorporated through Criminal Law (Second Amendment), Act 2016 in order to ensure that Pakistan fulfills its obligations under the United Nations'

Convention on Rights of Child as ratified in the year 1990. It has further been observed in the case referred *supra*, as under:-

“8. Article 34 of the United Nations' Convention on Rights of Child that had inspired the creation of the offence of sexual abuse in Pakistan. The object of introducing section 377A of P.P.C. is to protect children who form a vulnerable segment of the society and are unable to guard against and comprehend the consequences of actions of others (and the consequences of even their own actions). It is for this purpose that through promulgation of section 377A, the State has assumed the obligation to protect children from any form of sexual abuse. ...”

While elaborating the intent, scope and purpose of section 377A of PPC, it has been held as under:-

“13. In relation to section 377A the criminal justice system must make allowance for the child victim's inability to comprehend the inappropriateness of sexual abuse that he/she suffers and the fear factor that may lead to nondisclosure of the abuse suffered or delayed disclosure of such abuse or self-blame due to the fear of being disbelieved by parents or family members or out of fear of being hurt by molester. When it comes to children as victims of sexual abuse, the ordinary rules regarding the need for the victim of an offence reporting a crime to the police without delay cannot be applied in a straightjacket manner. ...”

The victim, in the instant case, has fully implicated the accused/petitioner in his statement recorded under sections 161 Cr.P.C on the day of occurrence and also ascribed accused/petitioner specific role of attempt to commit sodomy with him in his statement recorded under section 164 of Cr.P.C. The contents of FIR in addition to the statement of the

minor victim recorded under section 164 of Cr.P.C, when are taken on their face value, the same *ex facie* link the accused/petitioner with the commission of crime falling within the purview of section 377B of PPC entailing the punishment that falls within the ambit of prohibitory clause of section 497(1) of Cr.P.C. There exist reasonable grounds for believing that accused/petitioner has committed an offence falling within the ambit of prohibitory clause of section 497(1) of Cr.P.C. No case of post arrest bail at all is made out. Petition in in hand is devoid of any force, same is dismissed with the direction to trial court to proceed to decide the main case expeditiously preferably within a period of three months.

4. Before parting with this order, it has been noticed with grave concern that despite introduction of sections 377A and 377B in PPC, FIRs regarding attempts to commit sodomy or rape against minors under the age of 18 still include references to sections 377 or 376 of PPC read with section 511 of PPC. Office is directed to transmit copy of this order to Inspector General of Police, Punjab for his information and compliance.

(Shakil Ahmad)
Judge

*M.Sajid**

Approved for reporting

Judge