

**IN THE PESHAWAR HIGH COURT,  
BANNU BENCH**

*(Judicial Department)*

**Cr.Misc:BA No.408-B of 2023  
With Cr.Misc.No.33-B of 2023**

**Hasnan Khan  
Vs  
The State etc**

**ORDER**

Date of hearing 05.09.2023

For petitioner: M/s Salah-ud-Din Khan  
Marwat and Zafar Ullah  
Khan, Advocates

For respondent: Mr. Faqir Mehboob-ul-  
Hameed Advocate

For State: Mr. Habib Ullah Khan,  
Asstt. A.G.

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**FAZAL SUBHAN, J.-** The applicant-petitioner through Criminal Misc. Application No.33-B/2023 at the outset sought for addition of section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 (Act) in the main petition for the reason that it was added by the prosecution at a later stage. Counsel for complainant has no objection to this application, hence, the same is allowed. Office is directed to make the necessary correction.

2. Through instant petition, the petitioner Hasnan Khan, charged and arrested in connection with case FIR No.340 dated 06.08.2023 registered under sections 506 PPC read with 48 / 53 of the Act at Police Station Lakki City, District Lakki Marwat, is seeking his post arrest bail.

3. Facts, as divulged in the FIR, are that complainant Muhammad Zohaib lodged a report to the effect that on the eventful night, he alongwith his cousin Muhammad Jamal were present in front of their house and were having conversation, when at about 22:30 hours, the petitioner-accused Hasnan Khan came on a motorcycle, duly armed with a Kalashnikov, and asked him to accompany him on his motorcycle which he refused, hence, he alighted from the motorcycle and aimed his Kalashnikov at him. He alongwith his cousin attempted to catch hold of the petitioner-accused, however, he resorted to aerial firing to criminally intimidate them and then fled away from the spot leaving his motorcycle. Motive alleged in the report is that the accused was compelling the complainant and his cousin for illicit relations.

4. Arguments of learned counsel for the petitioner and learned counsel for complainant assisted by learned A.A.G for the State heard and record perused.

5. From the record it is clear that petitioner is directly nominated in the FIR, lodged within 30 minutes of the occurrence, hence, it excludes the possibility of deliberation and consultation. After registration of case, the Investigating Officer (IO) visited the spot and prepared site plan and took into possession the motorcycle abandoned by the petitioner after the occurrence. Besides the complainant, the incident is witnessed by Muhammad Jamal and a bulb lit at the site was also taken into possession, hence, there is sufficient material on record to prima facie support the prosecution version. Besides, another FIR No.221 dated 13.06.2023 was earlier registered for similar charges against the petitioner, however, as per learned counsel for complainant, it was subsequently compromised. This shows the immoral and disreputable character of the petitioner which inclined him to have illicit sexual relationship with the complainant.



6. The petitioner, besides being charged for criminal intimidation, is also charged for offence under section 53 of the Act, which reads as following:

**“53. Sexual abuse.**---Whoever commits an offence of sexual abuse shall be punished with imprisonment for a term which may extend to fourteen years and shall not be less than seven years and shall also be liable to fine which shall not be less than ten hundred thousand rupees.”

7. Sexual abuse has been defined in section 2(y) of the Act which mean, “employing, using, forcing, persuading, inducing, enticing, or coercing any child to engage in, or assisting any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or stimulation of such conduct either independently or in conjunction with other acts, with or without his consent”.

8. From the allegations in the report lodged by the complainant, it is clear that the petitioner is forcing, persuading, enticing and coercing the complainant for fondling and caressing for sexual implicit conduct which is covered by section 53 of the Act, punishable to imprisonment for life, hence,

it falls within the prohibitory clause of section 497 Cr.PC. The offence is one of moral turpitude and it affects the society as a whole, hence, petitioner does not deserve to be released on bail. Resultantly, this petition stands dismissed.

**Announced**  
05.09.2023  
(Ghafoor Zaman)

**Date of writing of order:**  
6<sup>th</sup> of September, 2023

  
**JUDGE**

*Office*  
*05/09/2023*

SCANNED

08 SEP 2023

*Mud*  
Khairi Khairi