

Form No.HCJD/C-121  
ORDER SHEET  
**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**Crl. Misc. No.54853/B/2022**

Muhammad Aamar Vs The State etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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08.12.2022 Mr. Arshad Ali Chohan, Advocate, for the Petitioner.  
Mr. Muhammad Mustafa Chaudhry, Deputy Prosecutor  
General, and Ms. Rahat Majeed, Assistant District Public  
Prosecutor, with Ghulam Farid/ASI.  
Nemo for the Complainant.  
Mr. A.D. Naseem, Deputy Attorney General for Pakistan.

**Tariq Saleem Sheikh, J.** – Through this application, the  
Petitioner seeks post-arrest bail in case FIR No.679/2021 dated  
02.09.2021 registered at Police Station Qaboola, District Pakpattan  
Sharif, for offences under sections 365-B & 376 PPC.

2. Briefly, the allegation against the Petitioner is that on  
01.09.2021 he abducted Complainant’s 12-year-old daughter  
(hereinafter referred to as the “Minor”) with the help of his  
co-accused and ravished her.

3. Arguments heard. Record perused.

4. The Petitioner is nominated in the FIR with a specific  
allegation. PWs Muhammad Younus, Hadayat Ali, and the victim (the  
Minor) herself have had their statements recorded under section 161  
Cr.P.C. in support of the prosecution case. After the girl’s clinical  
examination, the Medical Officer concluded that “possibility of rape  
cannot be ruled out”. Another significant fact that strengthens the  
prosecution case is that the Petitioner's very close relative, Sadiq,  
brought the Minor before the police at the *Dera* of Mustafa  
Lumberdar.

5. The Petitioner has failed to make out a case for bail. Hence, this  
petition is **dismissed**.

6. Any sexual act or attempt to obtain a sexual act through violence or coercion, an act to traffic a person, or an act directed against a person's sexuality is considered sexual violence. It is widespread and regarded as one of the most traumatic, pervasive, and frequent human rights violations. It has serious short and long-term physical and mental health consequences, including an increased risk of sexual and reproductive health problems, suicide, and HIV infection. Occasionally murder is committed during or after a sexual assault, and sometimes an honour killing happens due to sexual violence. Although women and girls are more commonly the victims, sexual violence can occur at any age. Anyone, including parents, caregivers, acquaintances, strangers, and intimate partners, can commit it. Worldwide, an estimated 20% of girls and 10% of boys are sexually abused.<sup>1</sup> The Vienna Declaration, issued by the World Conference on Human Rights in 1993, stated that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated."

7. Sexual violence can occur during both peacetime and armed conflict. Albeit the Nuremberg Military Tribunals and the Geneva Conventions both designated wartime rape as a crime against humanity, it was not until 2001 that the International Criminal Tribunal for the former Yugoslavia declared rapists to be war criminals.<sup>2</sup> In that year, the tribunal sentenced three men for violations of the laws or customs of war (torture, rape) and crimes against humanity (torture, rape) committed during the Bosnian war during the 1993 takeover of Foca. There, the women were raped and killed to "destroy an ethnic group by killing it, preventing its reproduction, or disorganizing it, and removing it from its home soil."<sup>3</sup>

8. Currently, no international treaty expressly addresses the other situations, so the UN human rights treaty bodies have re-interpreted and expanded existing provisions to condemn and prohibit sexual

violence.<sup>4</sup> The most commonly used provisions for this purpose are equality rights and the absolute prohibition of torture.<sup>5</sup>

9. The victims of sexual violence often avoid reporting the crime. One of the reasons is that criminal proceedings are traumatizing. In Pakistan, Parliament has passed the Anti-Rape (Investigation and Trial) Act, 2021 (the “Act”) to effectively deal with rape and sexual abuse offences (enumerated in the Schedules thereof, which are hereinafter referred to as the “Scheduled Offences”) through special investigation teams and Special Courts.<sup>6</sup> It extends to the entire country and casts the following obligations on the State:

(a) *Establishment of Special Courts*

Section 3 of the Act requires the Federal Government to establish Special Courts throughout the country in consultation with the Chief Justice of the High Court concerned to try the Scheduled Offences. Besides, it may designate the Additional Sessions Judges to perform the functions of the Special Court. Where the Gender-based Violence (GBV) Courts, Juvenile Courts, or Child Protection Courts have already been designated, they shall be deemed Special Courts under the Act.

(b) *Establishment of Anti-rape Crisis Cell*

Section 4 of the Act requires the Secretary, Ministry of Law and Justice, to establish or designate Anti-rape Crisis Cells (the “ACC”) in relation to the offences listed in Schedule-II throughout the country in such public hospitals as he deems fit in consultation with the Chief Secretary of the Province (or the Chief Commissioner of the Islamabad Capital Territory). At least one member of the ACC shall preferably be a woman and, as per section 5(1), it shall have the following powers, duties, and functions: (a) conduct of a medico-legal examination without any delay; (b) securing, collection and gathering of such evidence as may be expedient; (c) conduct of a forensic analysis or examination; (d) registration of a first information report (FIR) by the police; and (e) performing of any other action as may be

necessary. Section 5(3) of the Act directs the officer in-charge of a police station to immediately transmit any information regarding the commission of the offence mentioned in Schedule-II to the ACC.

(c) *Legal assistance to the victims*

Section 6 of the Act states that the Legal Aid and Justice Authority established under the Legal Aid Justice Authority Act, 2020, shall provide legal assistance to victims of the Scheduled Offences. It further states that the Fund set up under section 20 of the Act shall also be utilized for this purpose. The Special Committee constituted under section 15 shall, in consultation with the Ministry of Human Rights, approve panels of advocates and volunteers in each district or, if necessary, in any Tehsil, for the provision of legal, financial, or other assistance either on *pro bono* or fee basis.

(d) *Appointment of Prosecutor General and Special Prosecutors*

Section 7 of the Act provides that the Ministry of Law and Justice may appoint a Prosecutor General and Special Prosecutors to prosecute the Scheduled Offences.

(e) *Establishment of the victim and witness protection system*

Section 8 of the Act states that the Federal Government may establish a victim and witness protection system in addition to the existing laws. To this end, the Ministry of Law and justice shall frame rules and notify them. Until such rules are prepared, the provincial or the ICT (Islamabad Capital Territory) witness protection laws, as the case may be, shall apply.

(f) *Establishment of SSOIUs*

Section 9 requires that the Provincial Government shall establish Special Sexual Offences Units (SSOIUs) for investigation of the offences mentioned in the Act. The Federal Government would establish such unit(s) for the Islamabad Capital Territory. Section 10 empowers the SSOIUs to take cognizance of offences not listed in the Schedules if they were committed in connection with the Scheduled Offences.

(g) *Appointment of Special Committee*

Section 15 of the Act mandates the Ministry of Law and Justice to appoint a Special Committee comprising such members as it may deem fit on a *pro bono* or honorary basis, which shall set standards and key performance indicators and conduct performance measurements. The Special Committee shall also take steps for effective compliance with the Act. Under section 19, it shall also formulate recommendations for the Ministry of Law and Justice to make rules. Section 24 gives it some additional duties regarding the preparation and maintenance of the registers of sex offenders.

(h) *Rule-making*

Section 19 empowers the Ministry of Law and Justice to frame rules to carry out the Act's purposes upon the recommendations of the Special Committee.

(i) *Establishment of Fund*

Section 20 ordains that the Prime Minister shall establish a Fund to carry out the purposes of the Act.

(j) *Register of sex offenders*

Section 24 of the Act requires the National Database and Registration Authority (NADRA) to prepare a register of the persons convicted of a Scheduled Offence.

(k) *Public reporting mechanism*

Section 25 requires the Ministry of Law and Justice to frame rules upon recommendations of the Special Committee for establishing a reporting mechanism for receiving information from the public about suspicious persons or those suspected to have committed the Scheduled Offences.

10. The Act confers various rights on the victims. It is necessary to enumerate them as well.

(a) *Right to lodge FIR*

Section 29 of the Act expressly states that the provisions of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Code" or "Cr.P.C.") apply *mutatis mutandis* to the extent that they are not inconsistent with anything in the Act. Since all the Scheduled Offences are cognizable, under section 154 of the Code, the officer in-charge of a police station is under a statutory obligation to register the FIR when the victim or anybody else on their behalf reports the crime to him, or he otherwise receives information about it.

If the information is given by the woman against whom an offence under sections 336-B, 354, 354A, 376, or 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, the investigating officer shall record such information in the presence of a female police officer, a female family member, or any other person with the complainant's consent, as the case may be.

If the aforesaid woman is distressed, the investigating officer shall record such information at the complainant's residence or a convenient place of the complainant's choice in the presence of a police officer, family member, or any other person with the consent of the complainant, as the case may be.

Section 22-A(6) Cr.P.C. also empowers the Ex-officio Justice of Peace to issue appropriate direction to the police authorities on a complaint regarding the non-registration of a criminal case.

(b) *Legal assistance*

The victims of the Scheduled Offences are entitled to legal assistance under section 6 of the Act, and the Legal Aid and Justice Authority is charged with the duty to provide it.

(c) *Protection of the victim and the witnesses*

Section 8 of the Act states that, in addition to the existing laws, the Ministry of Law and Justice shall establish a victim and witness protection system through duly notified rules. It shall *inter alia* provide for the following, namely: (i) special security arrangements for witnesses and victims; (ii) concealment of identity; (iii) distance recording of testimonies through video-conferencing, audio-video links and by the use of modern devices; (iv) re-location of victims and witnesses; (v) provision of reasonable financial assistance; (vi) compensation to legal heirs of protected victims and witnesses; (vii) safe-houses, *Dar-ul-Amans*, etc.; (viii) such other measures as may be necessary and ancillary. Until such rules are framed, the provincial or the ICT witness protection laws, as the case may be, shall apply.

(d) *Harassment-free police investigation*

Section 9 mandates that the SSOIUs shall conduct investigations under the Act as follows:

- (i) for offences mentioned in Schedule-I, by the SSOIU; and
- (ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.

The SSOIUs shall comprise police officers who have received training in investigating sexual offences, and one unit member shall preferably be a female police officer. The officers of the SSOIUs shall ordinarily be from the area where the crime is committed. However, in exceptional circumstances, where the dictates of the fair, accurate, and technical investigation warrant otherwise, officers from other areas may be deputed to the SSOIUs. Section 9(6) of the Act ordains the SSOIUs to complete the investigation and submit the final report under section 173 Cr.P.C. before the Special Court through the prosecutor.

Section 22(1) makes the false investigation a crime. It states that if the investigator fails to carry out the investigation properly or

diligently, or causes the conduct of a false investigation, or fails to pursue the case in any court of law, he will be punished with imprisonment of any description, up to three years in prison, and a fine. It is important to point out that making a false complaint regarding the commission of the Scheduled Offence(s) is subject to a similar criminal sanction.

(e) *No two-finger test during the medical examination*

Section 13(1) of the Act prohibits two-finger virginity testing of the victim for medico-legal examination. It further states that it shall have no probative value. Section 13(1) codifies the Hon'ble Supreme Court's decision in *Atif Zareef and others v. The State* (PLD 2021 SC 550). The apex Court held that, according to modern forensic science, the two-finger test should not be used to establish rape. The size of the vaginal introitus has no bearing on a case of sexual violence. The status of the hymen is also unimportant because it can tear for various reasons, including cycling and riding. A torn hymen does not prove previous sexual intercourse, and an intact hymen does not rule out sexual violence. Hymen must therefore be treated like any other part of the genitals when documenting examination findings in cases of sexual violence. Only the observations relevant to the episode of sexual assault, such as fresh tears, bleeding, edema, etc., were to be documented. Instead of burdening themselves with reporting the victim's sexual history, medical officers must ensure that, in the case of a sexual offence of rape, they examine the external genital area for evidence of injury, seminal stains, and stray pubic hair. In *Atif Zareef*, the Hon'ble Supreme Court further stated that bringing the rape survivor's sexual history into the case by making observations about her body, such as "the vagina admits two fingers easily" or "old ruptured hymen", is an affront to the victim's reputation and honour and violates Article 4(2)(a) of the Constitution, which states that no action detrimental to a person's body and reputation shall be taken except in accordance with the law." It also impinges upon Article 14 of the Constitution which mandates that dignity shall be inviolable. Therefore, reporting the sexual history of a rape survivor undermines



her independence, identity, autonomy and free choice, degrades her human worth, and violates her right to dignity guaranteed by Article 14 of the Constitution.

(f) *Statement under section 164 Cr.P.C.*

Section 14 of the Act mandates that the victim's statement under section 164 Cr.P.C. should be recorded as soon as practicable. It should be videotaped, saved, and written down. However, such a statement may only be recorded once. The court shall allow the accused's counsel (rather than the accused himself) to cross-examine or question the victim.

(g) *Independent support advisor*

Section 11 of the Act states that if the ACC so determines, an independent support adviser shall accompany the victim during court proceedings to lessen the possibility of coercion, victimization of any kind, or any other difficulty the victim is experiencing or is likely to encounter.

(h) *Trial with full dignity*

Section 12(1) of the Act mandates that the trial of the Scheduled Offences shall be conducted in-camera. However, if the court thinks fit, on its own motion or an application made by either of the parties, it may allow any particular person to remain in the courtroom. Even where the proceedings are in-camera, section 12(2) of the Act empowers the court to adopt appropriate measures, including holding the trial through video-link or using screens to protect the victim and the witnesses.

Section 13(3) of the Act requires that the testimonies and evidence of victims, accused, and witnesses in the court are video-recorded, preserved, and reduced to writing.

Section 13(2) stipulates that any evidence to show that the victim is generally immoral shall be inadmissible in respect of any Scheduled Offence. This provision also codifies the Hon'ble Supreme Court's observations in *Atif Zareef's* case that a woman is entitled to

equal legal protection regardless of her sexual orientation or reputation. No one can invade her person or violate her privacy because of her alleged immorality. Even if the rape victim is used to sexual encounters, it is irrelevant in a rape case. The real question is whether or not the accused raped her. If the victim had previously lost her virginity, this does not give anyone the licence to rape her.

Here, it is necessary to mention section 12(3) of the Punjab Witness Protection Act, 2018. It specifically provides that "the court shall forbid a question to the victim of a sexual offence relating to any sexual behaviour of the victim on any previous occasion with the accused or any other person, unless such a question, in the opinion of the court, is a relevant fact in the case".

(i) *Protection against unauthorized media coverage*

Section 12(3) of the Act prohibits publication or broadcasting of any matter or information regarding the proceedings, except with the court's permission.

(j) *Speedy trial*

Section 16(1) of the Act ordains that after taking cognizance, the Special Court shall decide the case expeditiously, preferably within four months. Section 16(2) provides that the Special Court shall not grant more than two adjournments during the trial of a case, out of which one adjournment shall be upon payment of costs by the person seeking an adjournment. Where the defence counsel does not appear after two consecutive adjournments, the court may appoint another defense counsel with at least seven years standing in criminal matters for the defense of the accused from the panel of advocates maintained by the Special Committee.

(k) *Compensation*

Section 17 of the Act states that on conclusion of the trial, the court may order the convict to pay compensation to the victim, in addition to the fine, if any, prescribed by law.

(l) *Appeal*

Section 18 of the Act allows any person aggrieved of the final judgment of a Special Court to the High Court which shall decide it, as soon as practicable, preferably within six months from its institution.

(m) *Protection against disclosure of the identity*

Section 26 prohibits disclosure or revealing of the identity of a victim or victim's family in respect of the Scheduled Offences, without prior written permission of the victim or victim's family or the guardian, where the victim is a minor. The offender is liable to be punished in the same manner and extent as provided under section 376A PPC. (The offence under section 376A PPC is punishable with imprisonment of either description for a term which may extend to three years and a fine).

11. The President of Pakistan assented to the Act on 01 December 2021, and it was published in the Official Gazette on 04 December 2021. However, the Federal Government notified its enforcement w.e.f. 24 January 2022 in terms of section 1(3) thereof. Regrettably, the Ministry of Law and Justice took several months to issue the notifications for establishing the ACC, SSOIUs, and the Special Courts. The Prime Minister has not set up the Fund envisaged in section 20 of the Act, and the Ministry of Law and Justice has not framed the rules necessary for implementing the Act. Furthermore, the Special Committee under Section 15, which plays a crucial role, has not been constituted. As a result, the Act's objective has not been achieved. Not to mention, news stories about rape and other crimes involving sexual assault continue to be printed and broadcast. Hence, the following directions are given:

- (i) The Federal Government shall immediately review the steps taken to implement the Act and ensure that the requisite systems are in place within thirty days, including the creation of the Fund under section 20, to achieve the Act's objective.

- (ii) The Ministry of Law and Justice shall appoint the Special Committee in terms of section 15 within the next 30 days.
- (iii) The Special Committee shall formulate recommendations for carrying out the purposes of the Act and submit them to the Ministry of Law and Justice within two months of its appointment. The Ministry shall then make the rules under section 19.
- (iv) The Federal and the Punjab Governments shall give wide publicity to the rights granted to the victims of sexual violence under the Act through print and electronic media.

12. The print and electronic media and the V-loggers are reminded of the prohibitions imposed by section 376A PPC and sections 12(3) & 26 of the Act. They are restrained from publishing or broadcasting anything that violates these provisions. In particular, they are enjoined to exercise caution when doing anything that might reveal the identities of victims or their families. The law enforcement agencies shall proceed against the offenders. Pakistan Electronic Media Regulatory Authority (PEMRA) shall also play its due role in curbing the violations.

13. The courts have an equal obligation to protect the identity of the victims of sexual violence. Therefore, they should be very cautious while writing judgments. Henceforth, they shall identify them by their acronyms rather than their full name. The District and Sessions Judges in the Punjab shall ensure compliance with this direction.

14. I am aware that the present case pertains to the era before the Act came into force. Nevertheless, the offence alleged against the Petitioner falls within the Punjab Witness Protection Act, 2018. The rights, privileges, and protections set out in that statute are still available to the Minor. Section 376A PPC also applies.

15. The learned trial court is directed to expeditiously proceed with the case FIR No. 679/2021 and ensure its decision in the shortest possible time, preferably within four months.

16. I conclude this order with the above directions and observations.

**(Tariq Saleem Sheikh)**  
Judge

Naeem

Approved for reporting

Judge

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<sup>1</sup> World Health Organization, *Injuries and Violence: The Facts 2014 11 (2014)*, [https://apps.who.int/iris/bitstream/handle/10665/149798/9789241508018\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/149798/9789241508018_eng.pdf?sequence=1).

<sup>2</sup> Jean Franco, Rape and Human Rights, PMLA, Vol 121, No.5 (Oct.2006)) pp. 1662-1664. Available at: <https://www.jstor.org/stable/25501642>

<sup>3</sup> Ibid

<sup>4</sup> The international instruments relevant to sexual violence include the following (source: <https://www.hrw.org/reports/2000/tanzania/Duhweb-19.htm>) (reproduced verbatim):

*The Universal Declaration of Human Rights (1948)*

Article 3: Everyone has the right to life, liberty and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*The International Covenant on Civil and Political Rights (1966)*

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Article 9(1): Everyone has the right to liberty and security of person...

Article 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

*The International Covenant on Economic, Social and Cultural Rights (1966)*

Article 12: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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*The Convention on the Elimination of All Forms of Discrimination against Women (1979)*

Article 6 States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

In 1992 the Committee on the Elimination of Discrimination against Women (CEDAW) issued a recommendation (General recommendation No. 19) dealing exclusively with violence against women. The Committee stated that gender-based violence is a form of discrimination which seriously inhibits a woman's ability to enjoy rights and freedoms on an equal basis with men. They defined gender-based violence as that which is directed against a woman because she is a woman or which affects women disproportionately. They included "sexual harm or suffering" and "threats of such acts" as constituting gender-based violence. They noted that: "Gender-based violence may breach specific provisions of the Convention, regardless whether those provisions expressly mention violence".

*The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*

Article 16 requires, inter alia, that the State "prevent... acts of cruel, inhuman or degrading treatment or punishment..., when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...."

*The Convention on the Rights of the Child (1989)*

Article 19: Protection from Abuse and Neglect

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 24: Health and Health Services

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 34: Sexual Exploitation

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices.
- (c) The exploitative use of children in pornographic performances and materials.

Article 37: Torture and Deprivation of Liberty

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment

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(b) Every child deprived of liberty shall be treated with humanity and respect of the inherent dignity of the human person

Article 39: Rehabilitative Care

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

<sup>5</sup> Edwards, Alica. *Everyday Rape: International Human Rights Law and Violence Against Women in Peacetime* (2010).

<sup>6</sup> Preamble of the Anti-Rape (Investigation and Trial) Act, 2021.

**(Tariq Saleem Sheikh)**  
Judge