ORDER SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT.

Criminal Misc. No. 1238-B/2020

Syed Mohsinain Shah and another
Versus
The State & another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	05.01.2021	Syed Hamid Ali Bokhari, Advocate for the petitioners. Raja Fakhar Ijaz, Advocate for the complainant. Mr.Muhammad Ishaq, State Counsel. Muhammad Farooq and Waqar Ahmed, Sub Inspectors.

Through the instant petition, the petitioners namely Syed Mohsinain Shah and Syed Faramin Hussain seek post arrest bail in case F.I.R. No. 287/2020, dated 12.10.2020, offence under sections 376, 511, 382 506, 342, 337-J and 34 PPC, registered at police station Shahzad Town, Islamabad.

02. According to FIR, the complainant Mst. Sonia Nawaz reported the matter to the police that she came to Ali pur Farash Islamabad from Lahore on 28.09.2020 to visit her mother. On 01.10.2020 at about 06:00 P.M. when she went out the house of her mother, Arshad alias Lilly stopped her and asked her that Mursaleen Shah alias Cheeni Shah wanted to talk her and he is calling her. Arshad alias Lilly forcibly took the complainant to the house of Mursaleen Shah and she made sit in the "*Bathik"*. In the meantime, Mursaleen Shah, Syed Faramin Shah and one unknown person came there and they locked the "Bathik". They presented a juice to her whereupon she refused. Mursaleen and Faramin Shah forcibly administered juice and she started feeling not well. Mursaleen Shah and Faramin Shah attempted to rape her forcibly and she started weeping. The accused extended life threats and she started hue and cry. When she felt sick then

the said persons ousted her from the house and she went to house of her sister where she became unconscious. Her sister and mother shifted her to hospital. The accused extorted gold chain from her neck. Hence, the FIR u/s 382/342/376/511/337-J/506/34 P.P.C.

03. Learned Counsel for the petitioner has argued that there is delay of 11 days in registration of FIR, as no recovery has been affected from the petitioners and as per allegation, there is only attempt of rape and actually no offence of rape has been committed; and the offences do not fall within the prohibitory clause of section 497 of Cr.P.C. He further contends that the complainant also remained admitted in Addict Mental Health Care & Psychological Centre, as she is a drug addict and using cannabis, opium, sleeping pills and diagnosed impulsive, self-destructive behavior, explosive anger and extreme mood swings. In support of his contention, learned counsel has produced certificate from the Mind Care Rehab Centre, Islamabad which is also available in police file. Learned counsel for petitioner has lastly argued that brothers of the complainant are also involved in many cases of selling of narcotic substance and also produced FIRs registered against them. Learned counsel for petitioner has relied upon ***PLD 1995 Supreme Court 34, 2010 PCr.LJ 1775, 2011 PCr.LJ 1619.***

04. On the other hand, learned counsel for the complainant has contended that specific role is attributed to the petitioners, that they forcibly confined the complainant in a room and attempted to rape her by administering some intoxicant material. The complainant was admitted in the hospital w.e.f. 01.10.2020 to 05.10.2020 so this was the reason for delay in registration of FIR. Learned counsel for

complainant has further argued that the offences fall within the prohibitory clause of section 497 Cr.P.C and the petitioners are not entitled for the grant of bail after arrest. It has further been argued that accused party has also attacked on the police at the time of arrest of the accused and has tried to burn the house of the complainant, whereupon FIR was registered, when confronted the learned counsel for petitioners / accused stated that the police has conducted the inquiry in this regard and also produced the copy of the inquiry report before the Court. Learned counsel for the complainant has relied upon ***2010 P Cr.LJ 135, 2008 MLD 337,2010 YLR 450.***

05. Arguments heard, record perused.

06. According to the allegation, the occurrence took place at 06:00 P.M. in a very thickly populated area, however no evidence of witness of surrounding locality was recorded. As per available record there is only statement of the complainant / alleged victim, wherein she has stated that she by her own will went to the house of the accused party and they have tried to commit rape with her. There is no report of chemical examiner, which shows that the complainant was administered any poison seductive etc. Even the statements of the mother and sister of the complainant have not been recorded. Discharge certificate also shows that the complainant was referred to psychiatrist for treatment. Further, in the MLR there is nothing mentioned that when the complainant was taken to hospital she was unconscious or drowsy etc. Section 511 of PPC provides that, “

> ***511. Punishment for attempting to commit offences punishable with imprisonment for life or for a shorter terms:*** *Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall*

where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of imprisonment provided for that offence or with such fine daman as is provided for the offence, or with both".

07. A tentative assessment of record shows that present petitioners have made out a case of further inquiry. The case laws relied upon by learned counsel for the complainant does not extend any help to complainant due to having distinct facts and circumstances.

08. For the foregoing reasons, petition is accepted and the petitioners are admitted to bail subject to their furnishing bail bonds in the sum of **Rs. 200,000/- (Two Hundred Thousand only)** with one surety each in the like amount to the satisfaction of the learned trial Court. It is made clear that above observations are tentative in nature and shall have no impact upon the merits of the case.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal