

## HIGH COURT OF AZAD JAMMU & KASHMIR

(1) Writ Petition No.3417/2021.  
Date of Institution 16.10.2021.  
Date of Decision 08.12.2021.

1. Insha Manzoor d/o Muhammad Manzoor Kiani, w/o Azhar Tanveer.
  2. Azhar Tanveer s/o Tanveer Mahmood.
  3. Tanveer Mahmood s/o Shahzaman.
  4. Robina Bibi w/o Tanveer Mahmood.
  5. Muhammad Jameel s/o Shahzaman.
  6. Wajid Kiani s/o Muhammad Tariq.
  7. Muhammad Tariq s/o Shahzaman.
  8. Muhammad Imran s/o Muhammad Hanif.
  9. Muhammad Hanif s/o Muhammad Zaman, R/O Gharthama Chinari, Tehsil Hattian-Bala, District Jehlum Valley.
  10. Khawaja Junaid s/o Khawaja Abdul Raheem, R/O Lower Plate Muzaffarabad.
- Petitioners.

### VERSUS

1. The State through Advocate General of AJ&K, Muzaffarabad.
  2. Senior Superintendent of Police District Jehlum Valley AJK.
  3. Station House Officer (SHO) Police Station Chinari, District Jehlum Valley.
  4. Muhammad Manzoor Kiani s/o Shairzaman Kiani, R/O Gharthama Chinari, Tehsil Hattian-Bala, District Jehlum Valley.
- Respondents.

**WRIT PETITION UNDER ARTICLE 44 OF THE AZAD JAMMU AND KASHMIR INTERIM CONSTITUTION, 1974, READ WITH SECTION 561-A, CR.P.C FOR QUASHING F.I.R. NO.99/2021, DATED 11.10.2021**

(2) Misc. Petition No.331/2021.  
Date of Institution 28.10.2021.

Muhammad Manzoor Kiani s/o Shairzaman Kiani, R/O Gharthama Chinari, Tehsil Hattian-Bala, District Jehlum Valley.

Petitioner.

To be reported.  
**-Sd-**  
CHIEF JUSTICE

Vs.

1. Senior Superintendent of Police District Jehlum Valley AJK.
2. Station House Officer (SHO) Police Station Chinari, District Jehlum Valley.
3. Azhar Tanveer s/o Tanveer Mahmood.
4. Tanveer Mahmood s/o Shahzaman.
5. Robina Bibi w/o Tanveer Mahmood.
6. Muhammad Jameel s/o Shahzaman.
7. Wajid Kiani s/o Muhammad Tariq.
8. Muhammad Tariq s/o Shahzaman.
9. Muhammad Imran s/o Muhammad Hanif.
10. Muhammad Hanif s/o Muhammad Zaman, R/O Gharthama Chinari, Tehsil Hattian-Bala, District Jehlum Valley.
11. Khawaja Junaid s/o Khawaja Abdul Raheem, R/O Lower Plate Muzaffarabad.
12. Muhammad Azam Shahzad 'Nikah-Khawan' Makri.

Real-Respondents

13. Insha Bibi d/o Muhammad Manzoor Kiani, R/O Gharthama Jehlum Valley.

Proforma-Respondent.

**PETITION UNDER SECTION 491, CR. P. C**

**BEFORE:- Justice Sadaqat Hussain Raja, C.J.**

**PRESENT :**

Kokab-al-Saba Roohi, Advocate, for Petitioners in Writ Petition.

Raja Fareed Khan, Advocate, for Muhammad Manzoor Kiani, Petitioner, in Miscellaneous Petition.

Gohar-Rehman Abbasi, Advocate, for Respondents 3,4 & 13.

AAG for Official Respondents.

**ORDER:-**

As the captioned Writ Petition as well as Miscellaneous Petition relate to the same parties; therefore, are being

clubbed and disposed off through the instant order.

2. The Writ Petition has been instituted by Insha Manzoor etc, petitioners, under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, read with Section 561-A, Cr.P.C for quashing **F.I.R. No.99/2021**, registered against petitioners at Police Station, Chinari, on 11.10.2021, in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC, whereas Miscellaneous Petition has been moved by Muhammad Manzoor Kiani father of Insha Manzoor, under section 491, Cr.P.C for producing Insha Bibi before the Court.

3. The brief facts culminating into filing of the instant Writ Petition as well as Miscellaneous Petition are that petitioners are 1<sup>st</sup> Class State subjects of AJ&K and petitioner No.1, being a sui-juris lady, contracted 'Nikah', as per her free consent, with petitioner No.2 on

04.10.2021 through registered 'Nikahnama' Annexure-PB dated 05.10.2021, but respondent No.4 got registered F.I.R No.99/2021 against them at Police Station Chinari on 11.10.2021, in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC. It is further averred that petitioners Nos.1&2 are legally spouses, who are living amicably and have not committed any crime, but the act of non-petitioners with respect of lodging the impugned F.I.R is against the constitution as well as vested right of the petitioners; therefore, by accepting the writ petition, the aforesaid impugned F.I.R may be quashed. The proceedings in the aforesaid writ petition were in progress, meanwhile, Muhammad Manzoor Kiani father of Insha Manzoor filed **Miscellaneous Petition** under section 491, Cr.P.C for recovery as well as for production of Insha Manzoor in the Court. It is further averred in the aforesaid

petition that Insha Manzoor, who is 13 years old, was abducted by non-petitioners Nos.3 to 12 and forged 'Nikahnama' was prepared; therefore, she may be recovered from them.

4. After institution of the aforementioned Miscellaneous Petition, a notice was issued to SSP Hattian Jehlum Valley, through order dated 29.10.2021, to produce detenu, Insha Manzoor, before the Court. In compliance of the aforesaid order, ASI Police Station Hattian has produced Mst. Insha Manzoor before the Court today. She got recorded her statement deposing therein that she as per her free consent contracted 'Nikah' with Azhar Tanveer on 04.10.2021.

5. I have heard the learned Counsel for the parties as well as the learned State Counsel and gone through record of the case with utmost care.

6. At the very outset, it is pertinent to observe here that this Court in exercise of writ jurisdiction is not competent to assume role of investigating agency or the trial Court to give verdict as to whether an accused-person has committed an offence or not. The aforesaid view finds support from a case reported as ***Khadim Hussain v. Abdul Basit and 6 others [2001 SCR 447]***, wherein, it was held by the Apex Court as under:-

*"Irrespective of the view taken by the High Court in the aforesaid case, we are of the view that the High Court has no jurisdiction to quash criminal proceedings at the stage of investigation or thereafter as has been held in number of cases, referred to above, by the Supreme Court of Pakistan. It may be further pointed out here that the High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court to give verdict as to whether an accused person has committed an offence or not. It is for the ordinary Court to decide the matter under the relevant law."*

The Apex Court in a case reported as **Shan Muhammad V. Muhammad Younis & 4 others [2014 SCR 183]**, laid down that:-

*"The High Court/Shariat Court while acting under section 561-A Cr.P.C. has no power to take the role of investigating agency and declare that the F.I.R. was not correctly registered. It has powers to interfere under Section 561-A Cr.P.C. for implementation of order of the Court and to secure the ends of justice."*

Thus, this Court while acting under section 561-A Cr.P.C. has no power to take the role of investigating agency and declare that the F.I.R. was not correctly registered; however, it has powers to interfere under the aforesaid Section for implementation of order of the Court and to secure the ends of justice.

7. The main contention of the learned Counsel for Muhammad Manzoor Kiani, petitioner, is that the date of birth of Insha Manzoor according to Form-B and School record is 26.06.2007,

whereas in 'Nikahnama' her age was incorporated as 17.02.2003; hence, she was 13 years' minor girl when she was abducted and her forged 'Nikahnama' was prepared; therefore, F.I.R is not liable to be quashed, while on the other side, the learned Counsel for Insha Manzoor, petitioner, produced Age Assessment Certificate of Insha Manzoor and contended that she was adult at the time of 'Nikah' and she contracted 'Nikah' as per her free consent; therefore, F.I.R is liable to be quashed. A perusal of Age Assessment Certificate shows that according to Dental Surgeon her dental age is 17/18 years whereas according to Radiologist patient is pregnant and during pregnancy X-rays are not safe. Moreover, a positive pregnancy test report has also been produced. It is pertinent to observe here that according to the definition of an 'adult' contained in Section 2(a) of the Offence of 'Zina'



(Enforcement of Hudood) Act, 1985

*"'adult' means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years or has attained puberty"* and under section 299, APC, definition of an 'adult' has been described that an *"'adult' means a person who has attained, being a male, the age of eighteen years, or being a female, the age of sixteen years, **or** has attained puberty, whichever is earlier"*, in this manner, between the words **"age of eighteen/sixteen years"** and **"puberty"** the word **"or"** has been used, which clearly indicates that out of the aforesaid two conditions, the condition whichever comes earlier, will be considered to declare a person adult. Now the question arises as to when a female or a male attains puberty? The same question came under consideration of the Hon'ble Shariat Appellate Bench of the Supreme Court of Pakistan, whereby in the case titled

**Farrukh Ikram v. The State (PLD 1987 SC 5)**, it was held that "a female attains puberty when she starts menstruating" and in the case titled **Abdul Jabbar v. The State (PLD 1991 SC 172)**, it was laid down that "a male attains puberty when he starts secreting semen". Moreover, the question of attaining puberty earlier than 18 years has also been determined by the Federal Shariat Court in a case titled **Khan Zaman v. The State [1991 P.Cr.L.J (FSC) 928]** wherein it has been observed as under:-

*"Relying on the above symptoms of adulthood the Shariat Appellate Bench of the Supreme Court has made the following observations in the case of Abdul Jabbar v. State PLD 1991 SC 172:-*

”قرآن و سنت اور اسلامی فقہ کے مذکورہ بالا حوالوں سے جو بات واضح ہو کر سامنے آتی ہے۔ وہ یہ ہے کہ لڑکے کے بلوغ (Puberty) کی فیصلہ کن شرط انزال (ejaculation) ہے اور لڑکی کی صورت میں اس کے علاوہ حیض یا حاملہ ہو جانا جب کبھی ان میں سے کوئی علامت پائی جائے تو لڑکے یا لڑکی کو بالغ (Adult) تصور کیا جائے گا۔“

Hence, mere presentation of documentary evidence such as Form-B as well as School record etc is not sufficient to declare a

male/female as minor or adult and in the present case there is nothing on record to establish that Insha Manzoor, petitioner No.1, had not attained puberty and maturity at the time of marriage rather she produced her pregnancy test report dated 7.12.2021 which is positive.

8. It worthwhile to observe here that normally F.I.Rs are not quashed; however, in the cases where it is found that a sui juris lady contracted 'Nikah' with her free consent and F.I.R has been registered against such couple on account of revenge, then such like F.I.Rs ought to be quashed in order to secure the ends of justice because marriage is a civil contract and every Muslim of sound mind, who has attained puberty, can enter into contract of marriage and according to the injunctions of Islam, the consent of adult sane couple is sufficient for proving a valid Nikah and according to principle of Muhammadan Law the

presumption of valid marriage can be ascertained from the fact of acknowledgement by a man or a woman as husband and wife; however, it is void only when it is solemnized without his/her consent. In the instant case, Mst. Insha Manzoor, in compliance of the order of this Court, has been produced before the Court by ASI Police Station Hattian. She deposed that she as per her free consent contracted 'Nikah' with Azhar Tanveer on 04.10.2021 and at the time of 'Nikah' her father was also present. She deposed that being adult she understands advantages and disadvantages and a baseless F.I.R has been registered against her husband at Police Station Chinari which may be quashed. She further deposed that she wants to go with her husband. In this regard, her statement has also been recorded and made part of the file. Thus, the aforesaid statement of Mst. Insha Manzoor, petitioner No.1,

is most relevant evidence in this Court, wherein she has categorically stated that she entered into 'Nikah' with Azhar Tanveer on her own accord, and in the presence of the said statement, no further evidence is required to declare her 'Nikah' valid. In such state of affairs, it is abundantly clear that petitioners Nos.1&2 being sui juris have lawfully married to each other and in these circumstances the offences alleged in the impugned F.I.R are not made out against them and continuance of investigation by the police and dragging them in the Court would be a futile exercise, which may amount unnecessary harassment to them; therefore, I arrived at the conclusion that the impugned F.I.R is liable to be quashed.

9. The epitome of above discussion is that the writ petition is admitted and accepted; therefore, it is ordered that the impugned **F.I.R. No.99/2021,**

registered against petitioners at Police Station, Chinari, on 11.10.2021, in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC etc, is hereby quashed. The petition moved by Muhammad Manzoor Kiani, under Section 491, Cr.P.C, stands dismissed. The copies of the instant order shall be sent to official respondents for compliance. A copy of the instant order shall be annexed with other relevant file.

Muzaffarabad;  
08.12.2021. (RAH) .

**-Sd-  
CHIEF JUSTICE**