

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR  
DECEMBER 2021**

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**Case No.1** of December 2021

**Criminal Revision Petition No. 299/2021**

**Date of Institution: 27-10-2021**

**Title:** **Sakina**  
*Versus*  
**The State**

**Date of Decision: 02-12-2021**

**Before: JUSTICE SADAQAT HUSSAIN RAJA, C.J.**

**Facts:**

The captioned revision petition has been preferred against the impugned order of District Court of Criminal Jurisdiction Sudhnoti dated 27.09.2021, whereby bail, sought on statutory ground of delay in conclusion of trial, was declined to petitioner-accused.

**Issues:**

Whether accused being a woman is entitled to be released on bail in the light of amendment made in section 497(1), Cr.P.C, which postulates that in case of a woman being accused of an offence punishable with death, whose trial has not been concluded within a period of one year is entitled to be released on bail or not?

**Analysis:**

Following analytical observations were made:

**(a) S 497 (1) Cr.P.C. 1898.....** in case of a woman being accused of an offence punishable with death, whose trial has not been concluded within a period of one year is entitled to be released on bail. (Para 04, Page 04)

**(b) Delay attributed to conclusion of trial.**

If the delay attributed in conclusion of trial is concluded, even then her detention is more than one year; therefore, she (woman) is entitled to be allowed bail on the ground of delay in conclusion of trial. (Para 04, Page 05)

**(c) Ground which was left in earlier round cannot be availed in second round.** (Para 5, Page 07).

**(d) S. 497 (1) Cr.P.C. 1898.....a statutory right.....** the right of an accused to be enlarged on bail under the provisions of Section

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497(1), Cr.P.C. is a statutory right which cannot be denied to grant bail under the discretionary powers of the Court. (Para 09 Page 10).

**(e) *Third Proviso of S. 497 (1) Cr.P.C. 1898.....bail can be refused on two grounds ....***

The bail under the 3rd proviso to Section 497(1), Cr.P.C can be refused to an accused by the Court only on two grounds that (1) if the delay in the conclusion of the trial occasioned on account of any act or omission of the accused or any other person acting on his behalf and (2) if the case of the accused fell under the 4th proviso to Section 497(1), Cr.P.C. (Para 09, Page 10 and 11).

**(f) *An accused can claim bail on the ground of statutory delay in trial***, but it is incumbent upon the Courts to determine the heinousness, gravity and brutality of offence while allowing bail to an accused. (Para 09, Page 11).

**(g) *Section 497, Cr.P.C. 1898.....*** A woman can claim bail under the amendment of Section 497, Cr.P.C. after detention of one year. (Para 09, Page 11).

**(h) *Court can refuse bail*** to an accused whether he has suffered any previous conviction or not and whether he has been previously adjudicated to be guilty or not. (Para 09, Page 12). Reliance in this regard placed upon (NLR 1987 SD 274).

**Final Crux and Conclusion:**

The Hon'ble Single Bench of the Court held as under:

“On the basis of brutal manner of occurrence, petitioner-accused has been declared hardened, desperate and dangerous criminal. Consequently, the instant revision petition stands dismissed; however, the trial Court is directed to expedite the proceedings and conclude the trial as soon as possible.

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**Case No.2** of December 2021

**Writ Petition No.** 1622/2021  
**Date of Institution:** 21-11-2021

**Title:** Misbah and another  
*Versus*  
Senior Superintendent Police and others

**Date of Decision:** 02-12-2021

**Before:** **JUSTICE SADAQAT HUSSAIN RAJA, C.J.**

**Facts:**

The titled writ petition under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, read with Section 561-A, Cr.P.C for quashment of **F.I.R. No.123/2020**, registered against petitioners at Police Station, Kahori, on 09.11.2020, in offences under sections 11, 16, 19, ZHA, 468 & 471, APC.

**Issues:**

Whether under the provision of law as well as Shariat, petitioners have legal right to contract marriage with their free will and non-petitioners with malafide intention can register the impugned F.I.R against petitioners or not?

**Analysis:**

Following analytical observations were made:

- (a) *Role of investigating agency and writ jurisdiction* .....** it is significant 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. [2001 SCR 447], (Para 05, Page 04).
- (b) ..... *Section 561-A Cr.P.C. of 1898*.....** 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. (Para 05, Page 05).
- (c) *Inherent Jurisdiction under section 561-A Cr.P.C. of 1898.*** It is settled law that the inherent jurisdiction of this Court under section 561-A, Cr.P.C. is neither alternative nor additional in its character and is to be rarely invoked only in the interest of justice so as to seek redressal of grievance for which no other procedure is available and that the provision should not be used to obstruct or divert the

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ordinary course of criminal procedure. This section confers inherent powers upon this Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by this Court at any time. (Para 05, Page 05 and 06).

- (d) **Valid Nikah...** It is pertinent to mention here that according to the injunctions of Islam, the consent of adult sane couple is sufficient for proving a valid Nikah. (Para 07, Page 07).
- (e) **Quashment of FIR for Sui Juris Lady..** 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. (Para 08, Page 08 and 09).

**Final Crux**

The Hon'ble Single Bench of the Court held as under:

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 petitioners in the Court would be a futile exercise, which may amount unnecessary harassment to the petitioners; therefore, the impugned F.I.R is liable to be quashed.

**Conclusion:**

The instant writ petition is admitted and accepted; therefore, it ordered that the impugned **F.I.R. No.123/2020**, registered against petitioners at Police Station, Kahori, on 09.11.2020, in offences under sections 11, 16, 19, ZHA and 468 & 471, APC etc. is hereby quashed. The copies of the instant order shall be sent to official respondents for compliance.