

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

Crl. Misc. No.50519/B/2024

Muhammad Waqar Vs The State etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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19.11.2024 Mr. Shabbir Ahmad Mughal, Advocate, for the
Petitioner.
Rana Tasawar Ali Khan, Deputy Prosecutor General with
Dr. Zeeshan Mustafa/Consultant Pathology (PFSA) and
Imran/SI.
Mian Waris Ali, Advocate, for the Complainant.

Through this application, the Petitioner seeks post-arrest
bail in case FIR No.934/2024 dated 28.03.2024 registered at Police
Station Saddar Kasur, District Kasur, for offences under sections 302,
148 & 149 PPC.

2. The allegation against the Petitioner is that on
26.03.2024, he, along with his co-accused, subjected the
Complainant’s son, Umar Farooq, to torture at the *dera* of Col. Farooq
Bahadur. They then dragged him to the pool of a tube well located
there, forcibly pushed him into it, and drowned him.

3. Arguments heard. Record perused.

4. The Petitioner is specifically named in the FIR. PWs
Muhammad Arshad and Imran have recorded statements under section
161 Cr.P.C., supporting the prosecution’s case. On 29.03.2024, Dr.
Muhammad Awais Qarni, Medical Officer at DHQ Hospital, Kasur,
conducted Umar’s postmortem and confirmed that the cause of death
was drowning, thereby substantiating the ocular account.

5. The diatom test is an effective method for determining
whether death was caused by drowning. When a person is alive, and
death occurs due to true drowning, referred to as ante-mortem
drowning, it means the individual inhaled water while their mouth and
nose were submerged. During this process, diatoms present in the

water enter the lungs and, through blood circulation, reach the liver or other organs as blood continues to flow in the arteries and veins. In such cases, both the diatoms in the control water sample and those in the deceased's liver test positive. On the other hand, if the individual was already dead before entering the water, the lungs may contain diatoms, but the liver will not test positive for diatoms because blood circulation ceases after death. In this scenario, diatoms in the control water sample test positive, whereas those in the deceased's liver test negative. Modi explains the diatom test as follows:¹

“Finding of diatoms by microscopic examination of tissues like brain, liver or bone marrow from the femur or humerus, after acid digestion is also helpful in confirming death from drowning. Diatoms are a class of tiny unicellular algae of different shapes found in fresh or seawater. There are about 15,000 types of diatoms of which half are found in fresh water and the rest in seawater. They may be fan shaped (stellate), ribbon like and seen singly or in groups. They vary in size from 2m-1.0 millimetre, the usual size being 10.80m. They have hard siliceous, almost indestructible outer covering (frustule) and can pass through the alveolar walls of the lungs of a living person to the brain, liver and bone marrow.”

6. In this case, the Investigating Officer collected control water for diatoms and fixatives (10% formalin).

7. During Umar's postmortem, Dr. Muhammad Awais Qarni took out portions of the deceased's heart, lung, kidney, brain, and liver. He sealed them in separate jars and sent them to the Punjab Forensic Science Agency, Lahore (PFSA), for analysis. The PFSA's report dated 11.06.2024 gives the following histopathological findings:

- Histological examination of heart sections reveals patent coronaries. The myocardium sections are unremarkable.
- The lung sections reveal vascular congestion and presence of edematous fluid inside alveoli.
- The sections from liver reveal no pathological changes.
- The renal sections reveal renal tissue congestion and associated hemorrhages inside renal tissue.
- The brain tissue sections reveal congested blood vessels.

¹ Modi, *A Textbook of Medical Jurisprudence and Toxicology*, 27th Edn., p. 606-7

- Cytological examination of specially prepared smears from liver for Diatoms is positive and matched with present Diatoms in control water.

Based on the above findings, the Forensic Histopathologist has concluded that this is a case of ante-mortem drowning.

8. In this case, the ocular account provided by the prosecution witnesses is corroborated by both medical evidence and the forensic report. Furthermore, the police investigation has concluded that the Petitioner committed the alleged offence.

9. This application has no merit and is, therefore, **dismissed**.

10. The learned trial court shall decide the case on the basis of the evidence adduced before it without being prejudiced with this order.

(Tariq Saleem Sheikh)
Judge

Ahsan

Approved for reporting

Judge