

JUDGMENT

MOHSIN AKHTAR KAYANI, J.---Through this single judgment, I intend to decide the captioned writ petition and criminal miscellaneous bail petition as similar questions of law and facts are involved in both these petitions.

2. Brief facts referred in the captioned writ petition are that petitioner born in Rahim Yar Khan (Punjab), Pakistan on 21.06.1996, moved to UK when he was 02 years old and holds dual nationalities i.e. Pakistani and British. On 20.05.2015, dead body of one Andre Antonio Marshall (hereinafter "deceased"), admittedly an active member of an organized criminal group named the "Gooch Gang", was discovered by members of Public namely Rachel Xu, Aaron Cooper and Seanie Lynch at Manor Park, Urmstone, Manchester, UK. On, 23.05.2015, petitioner's blood was found on left shoulder of driver's seat back and consequently, petitioner was interviewed as a suspect on 26.05.2015, who was found to have an injury to his left hand, however petitioner was released on bail by the police and was due to surrender himself on 23.07.2015, but he failed to turn up and fled away. Accordingly, British High Commission at Islamabad requested Federation of Pakistan through Secretary, Ministry of Interior/respondent No.2 in June, 2017 for extradition of petitioner. Because of no extradition treaty between Pakistan and UK, Gazette notification under Section 4 of the Extradition Act, 1972 was issued on 09.06.2017 and ultimately, petitioner was arrested from Lahore on 01.07.2018. Consequently, after recording of evidence and statement under Section 342, Cr.P.C. of the petitioner, Additional Deputy Commissioner (G)/Inquiry Magistrate passed the impugned order dated 25.10.2018 with the conclusion that prima facie case is made out against the petitioner. Hence, the instant writ petition and criminal miscellaneous petition for bail.

3. Learned counsel for petitioner, inter alia, contended that petitioner has been involved in a blind murder and request made by the U.K Authorities for extradition of petitioner is based on suspicion, rather evidence; that Andre's real sister namely Sandra Marshall, leader of the Gooch Gang, extended life threats to the petitioner and his family, on the basis of which police issued them "Osman Warning" i.e. the warnings of death threats or high risk of murder issued to victims, therefore, petitioner and his family were forced to leave UK; that material placed before the inquiry Magistrate along with request was not duly authenticated in terms of Section 9 of the Extradition Act, 1972; that Investigation Officer of the requesting State did not appear before the inquiry Magistrate; that the learned inquiry Magistrate relied upon circumstantial evidence, which is the weakest kind of evidence under Pakistani law; that Simon Murphy/Detective Constable stated that alleged investigator is dishonest, who claimed to have associated 13 witnesses in investigation, but statements of only 07 witnesses have been submitted before the inquiry Magistrate; that presence of petitioner's blood at back side of driver's seat caused due to maintenance work of deceased's car as petitioner had owned a workshop by the name of "AA Tyres Ltd." in Manchester; that learned Inquiry Magistrate failed to appreciate that there was inordinate delay of 02 years in filing the request of extradition; that the request and the documents annexed therewith reveal no criminal case against the petitioner; that petitioner is a citizen of Pakistan and deserves to be treated in accordance with law; that prosecution evidence is full of discrepancies, benefit of which has not been extended to the petitioner; that the impugned order is sheer abuse of the process of Court and is in clear contravention of the applicable laws, therefore, the impugned order dated 25.10.2018 may graciously be set-aside and the requisition for extradition and surrender of petitioner made by the British High Commission at Islamabad may be rejected.

4. Conversely, learned AAG contended that the inquiry was conducted in accordance with law and all the codal formalities have been fulfilled; that the petitioner is a suspect in the murder of deceased and he was released on police bail with the direction to surrender on 23.07.2015, but he escaped from UK and fled away to Pakistan, where-after he changed his name and CNIC; that all the material placed before the Inquiry Magistrate was duly authenticated and fulfills the requirements of Section 9 of the Extradition Act, 1972; that the petitioner can be extradited as he is fugitive offender of a murder case; that the impugned order has been passed on the basis of evidence provided by the Police, which was received through Embassy of United Kingdom, Ministry of Foreign Affairs and Ministry of Interior, therefore,

the instant writ petition may be dismissed.

5. I have heard the arguments advanced by the learned counsel for petitioner as well as the learned AAG and perused the record with their able assistance.

6. Perusal of the record reveals that the petitioner has been declared fugitive offender by the UK Authorities on the basis of warrants of arrest dated 27.01.2016 issued by Manchester Magistrate Court Exh.P.8, P.9 and Exh.P.10 and his presence is required in the murder case of Andre Marshall, who was an active member of an organized criminal group the Gooch Gang, who operated in the Moss Side area of Manchester. His body was found by member of public Miss Rachel Xu on 20.05.2015 at about 7:25 next to a parked car on Manor Park Road, Manchester. Post-mortem examination was conducted by a pathologist Philip Lumb and cause of death was established on the basis of said medical examination as seven gunshot wounds. The vehicle of victim Andre Marshall BMW was recovered on Avian Avenue, Fallowfield, Manchester, which was forensically examined on 23.05.2015, from which blood of petitioner was discovered from the driver seat area on the base of the seat, the handbrake and the reverse of the sun visor. The petitioner was interviewed by police on 26.05.2015 as a suspect under caution. The petitioner denied his involvement in the murder of Andre Marshall but he confirmed that he had been with Andre Marshall on the evening of 19.05.2015. The petitioner was also inquired about his injury on his left hand, which was photographed and in response to the inquiry, he stated that he had been playing with a flick knife whilst in Andre Marshall's car and accidentally cut himself. The petitioner was released on bail after his interview as referred in Exh.P.5.

7. The above referred background was submitted by Simon Murphy in Exh.P.6 counter signed by Justice of the Peace Greater Manchester Magistrates Court. All this background consists of statement of Rachel XU/Exh.P.19 to Exh.P.22, statement of Seanie Lynch/Exh.P.23, Exh.P.24, statement of Phillip Lumb/Exh.P.25, Exh.P.26, statement of Andre Horne/Exh.P.27, Exh.P.28, statement of Fiona Barrett/Exh.P.29, Exh.P.30 and Exh.P.31, statement of Jacqueline French Exh.P.32, Exh.P.33, statement of Kate Leonard/ Exh.P.32 to Exh.P.36.

8. The above referred statements were attested by Justice of Peace greater Manchester Magistrates Court dated 05.08.2019/Exh.P.47 and request was forwarded to Government of Pakistan for extradition of the petitioner from Pakistan to United Kingdom on the murder charges of Andre Marshall. The Federal Government notified Inquiry Magistrate and the petitioner was arrested by FIA Authorities on 01.07.2018 and produced before the Inquiry Magistrate for extradition proceedings. The prosecution submitted gazette notification dated 02.06.2017 as Exh.P.B with the following contents:

S.R.O. 462 (1)/1017. WHEREAS the British High Commission, Islamabad, has requested for extradition of Abdul Qadar Ahsan, fugitive offender, who is wanted to the Government of United Kingdom for his Court trial on the charges of murder.

AND WHEREAS no extradition treaty has so far been executed between the Islamic Republic of Pakistan and United Kingdom.

NOW, THEREFORE, in exercise of the powers conferred by section 4 of the Extradition Act, 1972 (XXI of 1972), the Federal Government, considering it expedient, is pleased to direct that the provisions of the said Act, shall, with respect to extradition of Abdul Qadar Ahsan, who is wanted by the United Kingdom for the charges of murder have effect in relation to that state."

9. Keeping in view above background, the Inquiry Magistrate after

recording statement of Muhammad Naeem, Public Prosecutor, FIA, who produced all the record including the 'extradition documents received from U.K from Exh.P.1 to Exh.P.47 ordered for extradition of the petitioner. Statement of the petitioner was recorded under section 342 Cr.P.C. The Inquiry Magistrate recommended extradition of the petitioner to the Federal Government for final decision in terms of section 10 of the Extradition Act, 1972.

10. I have gone through the entire case, in which no one has put appearance on behalf of

U.K Authorities especially the Investigation Officer, who investigated the matter regarding murder of Andre Marshall within territorial jurisdiction of Manchester. The evidences collected by the I.O. in U.K comprises statements of seven witnesses, which were brought on record through the counter attested statement of Simon Murphy/Investigator and this Court is of the view that Inquiry Magistrate is acting like post office on the whims of U.K Government without considering the requirements under the Pakistani Law as to whether any statement given by any of the witness or I.O. of foreign jurisdiction/requesting state is to be considered valid for the purpose of extradition. I have gone through the relevant law regarding minimum requirement of Extradition Act, 1972, especially when Inquiry Magistrate in Pakistan has neither called Simon Murphy Investigator/Detector nor called any witness, who could state all these facts to ensure that the requirements of prima facie case have been complied with or otherwise.

11. As per record, the notification Exh.P.B issued by Government of Pakistan dated 02.06.2017 clearly acknowledged that "no extradition treaty has so far been executed between the Islamic Republic of Pakistan and United Kingdom" and due to the said reason section 4 of the Extradition Act, 1972 comes into play, which provides mechanism for extradition of fugitive offender with non-treaty state. The extract of section 4 is reproduced as under:-

"4. Application of Act to non-treaty States.-(1) Where the Federal Government considers it expedient that the persons who, being accused or convicted of offences at places within, or within the jurisdiction of, a foreign State, are or are suspected to be in Pakistan should be returned to the State, notwithstanding that there is no extradition treaty with that state, it may, by notification in the official Gazette, direct that the provisions of this Act shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State.

(2) Where a direction under subsection (1) in relation to a foreign State is in force, the provisions of this Act shall, with respect to the offences specified in that direction, have effect in relation to such State as if it were a treaty State."

12. The above referred provisions of Extradition Act, 1972 provide mechanism and in compliance of the same: Federal Government issued notification dated 02.06.2017/Exh.P.B referred to the petitioner, therefore, in my humble understanding the Extradition Act, 1972 applies in this case and minimum requirement of application of the Act to non-treaty state has been fulfilled.

13. The other requirement under Extradition Act, 1972 has been referred in sections 5 to 10, whereby an Inquiry Magistrate has to be appointed to see prima facie existence of the fact to connect the fugitive offender with the alleged offence in the judicial document warrant of arrest or any other document attested by foreign/requesting state.

14. The procedure for requisition for surrender of fugitive offender is provided in Sections 6, 7, 8, 9 and 10 of the Act in a complete manner which includes the requisition for surrender of fugitive offender through a diplomatic representative of Pakistan, by the State asking for surrender on the basis of treaty or arrangement agreed with the other State. After receiving the request, the Federal Government may if it thinks fit, issue an order to inquire into the case to any Magistrate; whereafter the Magistrate level inquiry shall be initiated and all 'the documents/material evidence against the fugitive offender shall be placed before the Magistrate regarding the allegation on the basis of which the custody of fugitive offender has been claimed. The Magistrate exhibits all the documents and depositions in presence of person against whom the allegation has been levelled and all those documents have been considered and received which were authenticated, which requires specific authentication by the competent authorities of the foreign State in a manner provided in Section 9(2)(a to d). The Inquiry Magistrate after holding an inquiry under Section 10 of the Act prepare a report; which includes the opinion of Magistrate as to whether a prima facie case is made out in support of requisition for the surrender of the fugitive offender, the Federal Government may issue a warrant of custody and removal of fugitive offender for his delivery at a place and to a person

named in the warrant.

15 The term "prima facie" has not been explained in the Act, therefore, the same has to be considered in its ordinary meaning i.e. "based on the first impression; accepted as correct until proved otherwise". The said term has also been explained in judgment reported as PLD 1989 Lahore 279 (Muhammad Asim Malik v. Anwar Jalil), 1977 SCMR 220 (Sui Gas Transmission Company v. Sui Gas Employees Union), 1992 CLC 2540 (Mst. Naz Shoukat Khan v. Mrs. Yasmin R. Minhas) and in the recent judgment of this Court reported as PLD 2018 Islamabad 258 (Muhammad Shahid v. Federation of Pakistan), wherein the term "prima facie" has been explained in the following manner:

"As per the black's law dictionary 8th Edition, "prima facie" means at first sight, on first appearance but subject to further evidence or information, and prima facie case means establishment of a legally required rebuttable presumptions.

16. In view of above legal requirement of Extradition Act, 1972, the prosecution submitted statement of Simon Murphy, Investigator Exh.P.1 to Exh.P.12, which includes the background history of the case. The relevant extracts of witness's statement, warrant of arrest, photographs of the fugitive offender for his identity including his finger prints Exh.P.15 to Exh.P.16. The Investigator Simon Murphy recorded the witnesses' statements, which were exhibited in this case before the Inquiry Magistrate referred as Exh.P.17 to Exh. P.34.

17. In addition to above statements, Kate Leonard statement on oath Exh.P.34 reveals the definition of crime of murder, the admissibility of hearsay evidence in Criminal Justice Act 2003 and the relevant extracts of the law have been submitted.

18. The entire background of the case has been submitted in the shape of depositions through diplomatic channel in Pakistan by requesting state to the Director General Europe M/o Foreign Affairs, Islamabad but this entire record is signed and sealed by the Greater Manchester Magistrates Court but surprisingly no one on behalf of Federal Government has put appearance before this Court to authenticate that all this record has been received from requesting state i.e. U.K in the office of M/o Foreign Affairs rather these documents have been placed on record directly by one Muhammad Naeem Public Prosecutor FIA, who is not authorized person under the law as no other document has been exhibited, through which it can be assumed that notified officer of Federal Government was appointed in this case under Extradition Act, 1972 to submit the documentary evidence of the requesting state against fugitive offender before the Inquiry Magistrate. In my humble view minimum requirement that the person/officer of the Federal Government i.e. from M/o Foreign Affairs or M/o Interior as the case may be, who received the documents from the requesting state has to authenticate the same that all the documents are genuine, duly attested by Attorney General as well as Department of Justice or Court of law of requesting state. The minimum requirement for foreign document has to be considered in terms of Pakistani Law, which provides existence of those foreign documents, if the same have been authenticated in the manner provided in Qanun-e-Shahadat Order 1984, therefore, record placed before the Inquiry Magistrate is not valid as the competent authority did not attest these documents in Pakistan nor any certificate to that effect has been exhibited before the Inquiry Magistrate.

19, In my humble view, the I.O of the requesting state Simon Murphy has to appear before the Inquiry Magistrate to substantiate his investigation being the minimum requirement to justify existence of prima facie case against the petitioner and mere submission of statements through postal channel before the Inquiry Magistrate is not permissible under Pakistani law.

20. Besides the above referred position, I have also gone through various case laws of extradition and observed therein the presence of witness, who has submitted details of facts being an Investigation Officer as well as a representative of foreign treaty State or person who was legally allowed to verify the foreign documents, order or who has authenticated the document received from the said State in shape of affidavit, where-after the Magistrate on recording of statement of those individuals gave his findings while considering the same as minimum standard. Reference to this regard is made to the following cases of extradition.

(a) PLD 1989 Lahore 279 (Muhammad Asim Malik v. Anwar Jalil, etc.) where oral

evidence of Craig Lovato appeared before the court as the Agent and Chief Investigator and deposed that the prosecution was in possession of oral evidence as well as documentary evidence proving against the fugitive offender the offence of conspiracy to distribute and import Hashish punishable in USA.

- (b) PLD 1993 Lahore 732 (Nargis Shaheen v. Federation of Pakistan), in which Shoaib Saeed appeared as PW-1 on behalf of Ministry of Interior and submitted extradition document received from USA through Ministry of Foreign Affairs on 03.06.1992, asking for surrender of Mian Muhammad Azam/accused. In this regard, Mr. Sher Gul Khan, Investigative Assistant of Drug Enforcement of Administration, USA appeared as PW-2 and deposed that he has been Associated with investigation of drug related activities of the accused and he has submitted complete insight of the manner and mode in which the accused committed the offence of conspiring to import and trafficking of heroine to the said State.
- (c) 1993 PCr.LJ 1082 (Nasrullah Khan Hunjra v. Government of Pakistan) in which Muhammad Dawood, Section Officer, Ministry of Interior appeared as PW-1 during the course of inquiry proceedings and tendered in evidence a document received from the requesting state for extradition of fugitive offender, whereas Arnold R. Moorin, Special Case Agent of DEA appeared as PW-2, who testified and interviewed the witnesses of that case, sworn statement before the grand Jury of Eastern District of New York and submitted complete insight of the crime with respect to the fugitive offender's involvement in aiding and abetting importation of a narcotics substances in the requesting State.
- (d) 1990 MLD 1611 (Zulqarnain Khan v. Government of Pakistan) in which Muhammad Dawood, Section Officer, Ministry of Interior as well as Mr. Benjamin Prainard, an American Investigator appeared as PW-1 and PW12, respectively, and supported the plea of extradition against Zulqarnain Khan/fugitive offender against his offence of conspiring smuggling of heroin from USA.

21. The above referred examples of different case studies give rise to a situation that cases and request of extradition have to be appreciated on the minimum standard of care and due process on the basis of principles of safe administration of justice, especially when the procedure of extradition is not clear however it has been observed from careful study of the above referred case laws that there are two sets of cases in which request of extradition has been made by the requesting state i.e.,

Firstly, there is an allegation of some extradition offence against the fugitive offender and the Investigation Officer of foreign jurisdiction has not yet concluded the investigation nor even submitted his complete investigation report before the Trial Court of that country, while no verdict (judicial pronouncement) was passed by the court of competent jurisdiction; and,

secondly, where the Investigation Officer has submitted a complete report against the fugitive offender or other co-accused persons and the court of competent jurisdiction of foreign State after appreciation of evidence has passed the judgment in which the role of fugitive offender has also been thrashed.

22. In my humble understanding, the cases of first category somewhere fall in grey area as such cases are at inquiry/investigation stage in foreign jurisdiction, therefore, the Inquiry Magistrate in Pakistan is bound to satisfy his conscience after perusal of documents, depositions, and affidavits brought before him, but in order to reach at just conclusion, it is necessary to call the official witness of Government of Pakistan, especially from Ministry of Interior or Ministry of Foreign Affairs, who receives the documents from the requesting state and shall appear before the Inquiry Magistrate, to submit the same in order to confirm that the original documents have been brought before the Magistrate of inquiry through a channel notified by the Government of Pakistan. Such practice will eliminate any doubt or falsity of documents. Similarly, the Inquiry Magistrate with view to reach at just conclusion should also call the Investigation Officer of the requesting state, who inquired and investigated the crime

in his own jurisdiction due to the reason that such Investigation Officer has collected the evidence and other incriminating articles, recorded the statements of witnesses through which he believes that fugitive offender is linked with the alleged crime. Such Investigation Officer of foreign jurisdiction has to appear before Inquiry Magistrate in Pakistan to record his statement and such witness has to undergo test of cross-examination so as to reach at just decision of the case in which the Inquiry Magistrate comes to a definite conclusion that as to whether a prima facie case has been made out against the fugitive offender or otherwise, failing which the admissibility of statement placed before the Inquiry Magistrate in shape of affidavit is of no legal worth.

23. While dealing with the scope and mode of magisterial enquiry under the Extradition Act, 1972, the legislature has provided Section 8 of the Act *ibid* which otherwise is quite exhaustive and provides a clear guidance to a Magistrate for holding magisterial enquiry, when the fugitive offender appears or is brought before him. For ready reference, Section 8 of the Extradition Act, 1972 is reproduced as under:

- (8) (1) On receipt of an order under Section 7, the Magistrate shall issue a summon or a warrant for the arrest of the fugitive offender according as the case appears to be one in which according to the law of Pakistan a summon or warrant would ordinarily issue.
- (2) When the fugitive offender appears or is brought before him, the Magistrate shall enquire into the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence."

The above referred Section has provided an exhaustive guideline to a Magistrate for holding an enquiry and has also provided the manner of inquiry with the words:

"In the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of session."

Hence, it can safely be concluded that enquiry proceedings before the enquiry Magistrate shall not be a summary proceedings, rather it would be in the same manner as a Sessions trial is conducted. In such eventuality, the enquiry Magistrate shall proceed with the matter like a trial court, especially in the manner as a Sessions Court conducts the trial of an accused. Hence, the Extradition Act, 1972 itself provides complete mechanism to the fugitive offender to defend himself against the requisition made by requesting State to the Federal Government for surrender of such fugitive offender. As such, the enquiry Magistrate shall conduct the trial after giving full opportunity of producing evidence to the parties i.e. requesting State (who is seeking requisition of fugitive offender) as well as to the fugitive offender and shall also adopt every mode to dig out the truth.

24. While considering the entire discussion referred above in the light of case laws, I am of the view that following minimum requirements have to be observed in cases of extradition:

- (i) Request of foreign State for extradition of person,
- (ii) The presence of fugitive offender before the Inquiry Magistrate,
- (iii) Submission of authenticated judicial documents stating the facts, allegations, by way of deposition, warrants, or statements on oath along with the certificate of authority of the requesting State i.e. Secretary of State and Attorney general Office which purportedly issued, received or taken by any court of justice outside Pakistan.
- (iv) In cases where judicial verdict has not yet been passed by the foreign court, the Investigation Officer of foreign jurisdiction/requesting State has to appear before the Inquiry Magistrate in Pakistan to justify the allegation on the basis of his own investigation, statement of witnesses or other incriminating articles collected by him/her through which the prima facie view regarding involvement of fugitive offender

is established on record.

- (v) In case where the Investigation Officer of requesting state has not put appearance before the Inquiry Magistrate in Pakistan during the extradition proceedings, due to his own safety, security or any other valid reasons, his statement could have been procured through a video link and the counsel for fugitive offender or his authorized representative can cross-examine the Investigation Officer in extradition proceedings in the office of Magistrate through the said facility of video link.
- (vi) The documents which were received from foreign jurisdiction transmitted by requesting state should be duly attested by competent authority including Secretary of the State under the seal of Department of Justice, Attorney General Office, or court of law and same shall be submitted before the Inquiry Magistrate in Pakistan through the officer notified by the Government of Pakistan from Ministry of Interior or from Ministry of Foreign Affairs, who are the authorities under the law to receive and submit the documents of foreign jurisdiction to initiate extradition proceedings in Pakistan and such officer has to appear in-person before the Inquiry Magistrate.
- (vii) In cases, where the court of foreign jurisdiction i.e. the Court of requesting state, has passed judgment against the co-accused persons or the fugitive offender in a same case, its certified record should be considered valid for the purpose of extradition request without the presence of Investigation Officer before the Inquiry Magistrate in extradition proceedings as the foreign judgment is admissible and presumption of truth is attached in terms of Articles 94 and 96 of the Qanun-e-Shahadat Order, 1984. Even, the judicial pronouncement of conviction purported to be certified by judge/Magistrate or officer of the State has to be considered valid in terms of Section 9(2)(c) of the Extradition Act, 1972.
- (viii) The Inquiry Magistrate shall proceed with the matter like a trial court, especially in a manner as of a sessions court in terms of Section 8(2) of the Extradition Act, 1972.

25. While considering the above principles and parameters laid down by this Court, I have gone through impugned order dated 25.10.2018, where all these questions have not been adhered to, through which it could be assumed that the documents exhibited before the Inquiry Magistrate are authenticated under the law and minimum requirements for appearance of Simon Murphy, Investigator is essential for extradition of fugitive offender and when the said I.O. has not put to test of cross-examination, the order of Inquiry Magistrate has to be considered order without any legal basis, which negates the very spirit of Articles 4, 9, 10-A and 15 of the Constitution of Islamic Republic of Pakistan, 1973, which provides minimum guarantees of due process of law and equal protection of law.

26. For the foregoing discussion, the writ petition is Allowed and the impugned order dated 25.10.2018 passed by the Inquiry Magistrate is Set Aside. The matter is Remanded to the Inquiry Magistrate with direction to conclude the same within period of two (02) months by calling statement of the I.O. of the requesting state as well as of the competent officer from Ministry of Foreign Affairs, who received the certified record from the requesting state, in a manner discussed above. In case the I.O. of the requesting state is unable to appear before the inquiry Magistrate in Pakistan, then his statement will be recorded through video link.

27. During course of arguments, Assistant Attorney General has provided additional information on the basis of newspaper reports dated 19.05.2016, whereby two co-accused Danial Shahid and Kadell Rivers were found guilty of cold blooded murder of Andre Marshall and have been sentenced for 3-1/2 years by the Manchester Crown Court, which shall be also considered by the Inquiry Magistrate in de novo proceedings and if any judgment of conviction of co-accused of the petitioner has been passed by the Court of competent jurisdiction in U.K, its certified copy duly attested by the authorities shall also be placed on record

28. It has further been observed that additional information of petitioner regarding his identity has been presented and referred by the Inquiry Magistrate in the impugned order,

wherein the alleged offender/petitioner changed his identification, name and date of birth and has been registered in another family with the name of Abdul Kareem, date of birth 1-3-1995 father name Ghulam Mustafa Lund mother name Hakim Zadi with two other siblings r/o District Dadoo but said information has not been confirmed through any cogent documentary record, therefore, FIA Authorities are directed to submit the complete documentary record after obtaining the report from NADRA as to whether fugitive offender has changed his personal details of identity in order to conceal his presence in Pakistan or otherwise and such material shall also be placed before the Inquiry Magistrate for final adjudication.

29. At last, the petitioner has also filed Crl. Misc. No.150-B/2019 (Abdul Qadar Ahsan v. The State) for his post arrest bail in the extradition offence. While dealing with the said, proposition, the principles laid down in Section 497 Cr.P.C. are applicable, which govern the question of bail in cases of non-bailable offences in Pakistan jurisdiction, although Abdul Qadar Ahsan/petitioner has been charged for the murder of one Andre Antonio Marshall in United Kingdom and petitioner has been taken into custody on 01.07.2018 in Lahore, therefore, at this stage, any passing of any findings qua the grounds of bail while considering the prima facie case of petitioner are not appropriate as it will affect the entire proceedings in foreign jurisdiction. However, this does not mean that all the fugitive offenders, who have been taken into custody in Pakistan, are not entitled for concession of bail. Each and every case has to be dealt on its own merits and the Court is empowered to decide the post arrest bail application while considering the record of the case and the evidence brought on record. The tricky part in the entire proposition is the conduct of the fugitive offender, who absconded from foreign jurisdiction and came to Pakistan, while in case if the bail is allowed in his favour, there is apprehension that the fugitive offender might again abscond, which may result into delay of the extradition proceedings, therefore, while considering this aspect, the conduct of petitioner, who came to Pakistan without any notified channel and remained absconder despite the fact that he was interviewed by the police authorities in UK with respect to investigation of murder of Andre Antonio Marshall, disentitles him for the concession of bail.

30. In view of above discussion, Crl. Misc. No.150-B/2019 (Abdul Qadar Ahsan v. The State) is hereby Dismissed. However, after final verdict of the Magistrate in post remand proceedings, petitioner would be at liberty to file afresh bail application, if so advised

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