

## **ORDER SHEET**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD JUDICIAL DEPARTMENT**

#### **1. Crl.Misc No.184-B/2017**

Imtiaz Ali Khokhar alias Taji Khokhar

**Vs.**

The State and another

#### **2. Crl.Misc No.185-B/2017**

Imtiaz Ali Khokhar alias Taji Khokhar

**Vs.**

The State and another

S.No. of proceedings	Date of order/ proceedings	Order with signature of judge and that of parties or counsel where necessary.
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21.04.2017 Syed Zahid Hussain Bokhari, Advocate for the petitioner.  
Mr. Muhammad Fakhar Hayat Awan, Advocate for the complainant.  
Complainant in person.  
Mr. M. Akram Gondal, State Counsel.  
Mr. Nauman Munir Peracha, Advocate for SZABIST.  
Shaukat Hussain, Inspector/I.O.  
Munir Ahmed S.I.

Through this single order, the above mentioned two bail petitions are being decided, which have arisen out of same controversy/occurrence.

2. Petitioner Imtiaz Ali Khokhar alias Taji Khokhar s/o Allah Ditta seeks bail after arrest in case F.I.R. No.41 dated 19.02.2013 registered u/ss 302,34,109 P.P.C, with Police Station Koral, Islamabad and in private complaint filed by complainant Anees-ul-Afreen in the said

occurrence, in which, in addition to above offences, offence u/s 201 P.P.C was also included.

3. Pithily, the facts of the case as presented by the complainant are that he is owner of a house situated in Dhoke Gangal East. Some time ago, Rashid s/o Abdur Razzaq, Tanveer s/o Khan Muhammad Mistri and Imran s/o Allah Ditta tried to take illegal possession, therefore, they got injunctive order and also moved application to the Police Station Koral. On the fateful day i.e. 19.02.2013 at about 12:00 noon he alongwith his brother Ishtiaq-ul-Salkeen and Shamas-ul-Arfeen was constructing the house, when Imran s/o Allah Ditta, Sajid s/o name not known and Tanveer s/o Khan Muhammad Mistri all armed with Kalashnikovs came over there and restrained them from raising construction. The assailants threatened them, therefore, they went inside the house due to fear. Then the assailants came over the roof of adjacent house. Imran made burst of Kalashnikov which hit Khalid Farooq s/o Ishtiaq-ul-Sallkeen inside of his left shoulder, who fell on the ground and succumbed to the injuries. The trio decamped from the place of occurrence. Complainant further added that the offence was committed at the instigation of Imtiaz Ali Khokhar alias Taji Khokhar/present petitioner.

4. In Crl. Misc No.185-B/2017 it is disclosed that during investigation of above F.I.R, it proved that the petitioner was falsely involved in this case and there was no evidence of abetment, therefore, a private complaint was filed. After issuance of process, the petitioner submitted an application under Section 91 Cr. P.C in private complaint before the learned ASJ, Islamabad in which the petitioner was directed to submit bail bonds to the tune of Rs.one lac with one surety. However, the complainant challenged the order dated 22.6.2013 before this court in Crl. Revision, which was disposed of with the

observations that the fate of the case is to be decided by the court concerned i.e trial court on submitting the bail application. In pursuance whereof, bail applications of the petitioner in both the matters have been dismissed through consolidated order dated 18.3.2017.

5. In support of petitions, learned counsel for the petitioner contended that the petitioner is an old man of 64 years, who is suffering from multiple diseases. The petitioner was under treatment in Jail Hospital, but the functioning of kidneys was failed, therefore, he was immediately shifted to Holy Family Hospital, Rawalpindi in a critical condition where he was admitted on 01.03.2017. It is added that in Holy Family Hospital due to heart attack the petitioner was shifted in a critical condition to the Rawalpindi Institute of Cardiology. Thereafter, he was shifted back to Holy Family Hospital, where the petitioner is going through the process of dialysis. The petitioner requires specialized treatment for the curement of diseases. It is vigorously contended that the petitioner is in incarceration for the last more than 3½ years. The petitioner was not present at the place of occurrence and the only allegation against the petitioner is of abetment. There is no detail of witnesses in the police record. The allegation of abetment levelled against the petitioner is *ex ante*. The petitioner being old, weak and seriously sick and infirm person is entitled to the concession of bail. To supplement his submissions, learned counsel relied upon **Fidous Paul v. The State** (2004 SCMR 15), **Mumtaz Ali Khan v. The State** (2001 P Cr. L J 1406 [Lahore]) and **Zar Muhammad v. Mian Jafar Shah and another** (PLD 2009 Supreme Court 707).

6. Conversely, learned State Counsel assisted by learned counsel for the complainant vehemently opposed the bail. It is contended that the petitioner is habitual criminal with stinking reputation, who is involved in

number of criminal cases; that the offence was committed at the behest of the petitioner; that for arrest of the petitioner, the Hon'ble Supreme Court of Pakistan took suo motu notice and then he was arrested; that the case is at evidence stage; that statements of some witnesses have been recorded; that the required treatment of the petitioner can be provided at the Hospital of his choice and presently the petitioner is being medically treated by highly qualified doctors and professors; that the offence falls within the prohibitory clause of Section 497 Cr.P.C; that the deceased was done to death in a cruel and chilling manner; that there is strong evidence against the petitioner; therefore, he is not entitled to the concession of bail. To orchestrate their arguments they have relied upon **Mamaras v. The State & others** (2009 CrIj 543); **Ghulam Qammer Shah v. Mukhtiar Hussain and others** (PLD 2015 Supreme Court 66); **Malik Javaid Iqbal v. The State and others** (PLD 2015 Supreme Court 250), **Babar Hussain v. The State and others** (2016 SCMR 1538); **Naseem Malik v. The State** (2004 SCMR 283); **Wazir Gul v. The State** (2016 YLR Note 27 [Peshawar]; **Muhammad Imran v. The State and others** (2016 SCMR 1401); **The State v. Haji Kabeer Khan** (PLD 2005 Supreme Court 364) and **Ghulam Ahmed Chishti v. The State and another** (2013 SCMR 385).

7. I gave anxious consideration to the submissions made and perused the record minutely.

8. Perusal of record reveals that statements about abetment were recorded on 25.07.2013 with a delay of almost 5 months and one week. Interestingly, particulars of witnesses i.e parentage, caste, age and addresses examined by the police u/s 161 Cr. P.C have not been mentioned. Private complaint was filed on 03.5.2013 but even in that complaint no reference of

witnesses mentioned above is provided. Ailment of petitioner is admitted. In compliance with order of this court, Medial Officer, Central Jail Adiala Rawalpindi observed as under:-

“As per order of the Honourable Islamabad High Court, Islamabad vides No.11698/criminal dated 29.03.2017.

It is stated that under trial prisoner Imtiaz Ali Khokhr @ Taji Khokhar S/O Allah Ditta aged about 64 years is suffering from:-

- Hypertension
- Diabetes Mellitus with its complications like Retinopathy, Nephropathy and Neuropathy
- Left Maxillary Sino-Nasal Polyposys with super added fungal sinusitis.
- Chronic Renal Failure.

Under Trial prisoner presented in jail hospital on 28.02.2017 with following complaints.

- Cough 02 days
- Unable to sleep straight
- Shortness of breath on sitting
- Decrease appetite
- Vomiting

Investigations carried out on advice of medical specialists Dr. Arshad Iqbbal Satti DHQ Hospital Rawalpindi which showed:

√	Serum Creatinine	7.54mg/dl
√	Serum Urea	48 mg/dl
√	Serum Potassium	5.9 mmol/l
√	Haemoglobin	6.2gm/dl

Urgent consultation done with nephrologist Dr. Naveed Sarwar, AP Nephrology Holy Family Hospital, Rawalpindi.

Who diagnosed him as a case of RENAL FAILURE and advised urgent DIALYSIS.

Under trial prisoner shifted to Holy Family Hospital on 01.03.2017 for dialysis on emergency basis.

Till date under trial prisoner admitted in CCU at Holy Family Hospital, Rawalpindi. Latest health condition of under trial prisoner received vide No.MODF dated 30.3.2017 which showed”-

“Mr. Imtiaz Ali 66 yrs old gentleman presented in Medical Emergency Holy Family Hospital, on 1<sup>st</sup> March 2017 at 08.46 PM. He is known diabetic for last 16 years on insulin therapy, hypertensive for last 4 years. He has got end stage renal disease and peripheral vascular disease with left big toe amputated. He was admitted in CCU under care of Medical unit-1 on 1<sup>st</sup> March 2017 with Dyspnoea NYHA class III. He was anaemic with B.P 110/60

mmHg, crepts upto mid zone, Chest X-ray shows cardiomegaly & left lobar opacity. His Hb was 6.5 TLC was 14.6, Urea 193, Creatinine 7.0 K 6.8 LFT'S normal. Ist session of Haemodialysis was done on 2<sup>nd</sup> March 2017 and was given 02 RCC's with Haemodialysis. After 72 hrs patient was markedly improved with Dyspnoea a NYHA class-I. HB was 8.8, TLC was 15.1, K 4.7. During hospital stay he was given broad spectrum IV antibiotics (inj) Moxifloxacin, inj Meropenam, Asprin, Rosuvastatin, and Heparin 500 IU B.D. His blood Culture was negative. Then he developed Apprehension with no history of chest pain ECG showed ST segment elevations in lead VI, V2 and V3. His Echocardiography was done on 4<sup>th</sup> March 2017, which showed normal sized LV with antero apical, distal septal & distal lateral wall hypokinesia with EF 30 % and trace pericardial effusion with no evidence of thrombus. He was immediately shifted to RIC, Rawalpindi on 04<sup>th</sup> March, 2017, where Professor, Brig Qaiser and Assistant Prof. Dr. Hamid Shreef reviewed the patient. He was treated according to ACS protocol, Coronary intervention and thrombolytic therapy was not offered because of his co morbidities and advised conservative treatment. Then he was shifted back to Holy Family Hospital, Rawalpindi on 5<sup>th</sup> March 2017 for nephrology consultation and management. Once he was shifted back to Holy Family Hospital, Rawalpindi he developed intermittent Atrial Fibrillation, started with Tab Cordarone 200 mg OD. After 72 hrs he regained sinus rhythm. He was reviewed by Dr. Imran Saeed Ali, Assistant profession, visiting Cardiologist Benazir Bhutto Hospital and Head of Department Cardiology, Rawalpindi Medical College who agreed with the present management Plan. Later on he developed Hematuria with drop in Hb from 11 to 6 g/dl with prolonged PT/APTT. Then his Rivaroxaban and heparin was stopped. He was given vitamin K and FFPs for 03 days. ECG shows left axis deviation and generalized T wave inversion in V1 to V6. During Hospital stay he developed UTI and given antibiotics according to culture and sensitivity. He is on insulin R 06 IU TDS. His blood sugar levels are within optimal range. His 15 sessions of Haemodialysis done almost on alternate days and 06 units of blood transfused during Haemodialysis. Last investigations done on 29<sup>th</sup> march 2017, TLC 3.4, Hb 10.3, Platelets 279, PT, APTT normal, urea 46, Creatinine 2.5 K 3.7 LFT'S normal. He requires Haemodialysis on alternate days."

It is obvious from report that above said under trial require specialized tertiary care treatment and dialysis on alternate days which is not possible in jail hospital."

9. For further satisfaction vide order dated 31.03.2017 this court directed Vice Chancellor, Shaheed Zulfiqar Ali Bhutto University to constitute a medical board and in compliance with the same a Medial Board was constituted and report was submitted, which is reproduced herein below in verbatim:-

“The medical board met on 15.04.2017 and examined above patient. Also his previous record was reviewed in detail by the board members.

He is a long standing diabetic with multiple complications including ischemic heart disease with congestive failure, retinopathy with visual impairment, nephropathy leading to end stage renal disease and requiring renal replacement therapy in the form of hemodialysis thrice weekly and he has evidence of peripheral vasculopathy with Lt. Big toe already amputated.

His latest clinical status is of marked debilitation and he is bed bound. There is fluctuation in his symptoms severity as recently he stayed in Rawalpindi Institute of Cardiology for Acute coronary syndrome. He has generalized changes of ischaemia on ECG and echocardiography shows moderate left ventricular dysfunction (EF35 %).

The board is of the opinion that with all his comorbidities he should stay hospitalized with multi disciplinary management approach. With his clinical status such a management is not possible in jail hospital. “

10. Above reports clearly show that the petitioner is suffering from serious ailments and complainant side could not deny this fact, perhaps this was the reason that no challenge was put to the reports. The petitioner was arrested on 05.08.2013 when he was brought from Dubai in compliance with order of apex court. The role ascribed to the petitioner, evidence available on record and the allegation of abetment, prima facie are not of much value and significance as persons examined by the police with the names of Muhammad Rizwan and Abdul Qadir have no identity on record. The Inspector/I.O of the case in so many words admitted in the court that both the persons were brought by the complainant, but he did not bother to take details about the persons produced and incorporated in statements u/s 161 Cr. P.C. I have no doubt that this approach of the I.O/Inspector is not only dishonest but speaks volume of incompetence and lack of understanding about the requirement of law. The way he proceeded in the matter, I am fully satisfied that this official is not competent to handle investigation of even a minor case

what to talk of case involving capital punishment. Copy of this order be communicated to the IG , ICT, Islamabad for holding an inquiry and if found guilty to take action against him in accordance with law.

11. From the available evidence and allegations, I am convinced that the petitioner has made out a case of further inquiry under Section 497 (2) Cr.P.C. The petitioner admittedly suffering from serious illness which requires treatment of choice, special diet and conducive atmosphere. Reliance in this regard is placed on 1997 P CrL L J 348. Moreover, allegations of abetment cannot be found sufficient to deprive any accused of his fundamental right guaranteed by Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. Although, trial has commenced and normally courts do not interfere to grant or refuse bail at this stage of proceedings. But this rule is not absolute and when any accused successfully makes out his case of further inquiry, bail is granted. Guidance on this is sought from PLD 1989 Supreme Court 585, 1997 P Cr L J 847, PLD 1989 Lahore 233 and 1991 SCMR 322, on point of absence. As far judgments relied upon by learned counsel for the complainant are concerned, the same are not applicable to the facts and circumstances of this case.

13. The net result that flows from the above discussion is that the petitioner is entitled to concession of bail in both the matters. Consequently, both the petitions are **allowed** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.25-lacs with two sureties each in the like amount to the satisfaction of the learned trial Court.

14. The learned trial court is directed to conclude the trial within a period of three months without granting un-necessary adjournments and submit compliance report till 29<sup>th</sup> July, 2017.



15. The name of the petitioner shall be placed on ECL. Office is directed to do the needful in this regard. However, the petitioner will be at liberty for his treatment at the hospital of his choice within the country.

**(SHAUKAT AZIZ SIDDIQUI)**  
**JUDGE**

Sabir

Approved for reporting

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