

Judgment Sheet

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.682-B of 2011

Afraz Mehmood

Versus

The State etc.

<i>Petitioner by:</i>	<i>Mr. Sabah Mohyuddin Khan, Advocate</i>
<i>State by:</i>	<i>Khawaja Javed Iqbal, standing counsel</i>
	<i>Javed Tanoli, ASI with record.</i>
<i>Respondent No.2 by:</i>	<i>Mr. Arif Mehmood, Advocate</i>
<i>Date of decision:</i>	<i>30-11-2011</i>

SHAUKAT AZIZ SIDDIQUI: J: Petitioner Afraz Mehmood

seeks bail after arrest in Case FIR No.215, dated.25.07.2011, offence under section 302/109 PPC, registered at Police Station Bahrakahu, District, Islamabad.

2. Briefly, the prosecution story as gleans out from the FIR is that complainant, Ashiq Hussain through an application addressed to SHO, stated that he is resident of Azad Kashmir and his real brother namely, Maqsood Khan, (deceased) aged about 36 years was married, having two sons and three daughters, was doing his job in the Holy Family Hospital, Rawalpindi. He further stated that, Ifraheem, s/o Muhammad Hussain (real brother of the present petitioner) is their relative who is residing in "Nai Abadi, Bahrakah". That on 23.04.2011, he brought brother of the complainant Maqsood Khan to Nai Abadi, Bahrakahu and in the morning of 24.04.2011 he received information from the Holy Family Hospital that his brother Maqsood Khan had died. On this information he reached at Holy

Family Hospital from where he acquired knowledge that dead body of his brother had been taken to PIMS Hospital by the Police of Bahrakahu, Police Station. He further states that Doctor of the Holy Family Hospital showed suspicion about the torture inflicted upon the body of his brother as his brother was not suffering from any ailment. He further mentioned that he got conducted the postmortem and made the statement that he would make his statement after the postmortem examination. The complainant however, explains that on receipt of the report of the Chemical Examiner he came to know that death of his brother was due to result of poisoning. He alleges that Ifraheen in connivance with his brothers Afraz (present petitioner) and Naeem administered poison to his brother. Motive of the occurrence advanced by the complainant is that his brother, Shakir gave an amount of Rs:2,10,000/- for taking him abroad but after three months, he was sent back to Pakistan. Deceased used to demand that amount from Ifraheem.

3. The petitioner applied for bail after arrest before the learned Sessions Judge, Islamabad who entrusted the same to Additional Sessions judge. The request of the bail was declined by the learned ASJ vide impugned order dated.31.10.2011.

4. The learned counsel for the petitioner has argued that from the contents of the FIR, the death of the deceased appears to be shrouded in mystery. The complainant himself was not certain about the cause of death, therefore, he firstly deferred the statement till the conduct of postmortem and thereafter waited till receipt of the report of Chemical Examiner. The learned counsel submits that no source whatsoever, has been mentioned by the complainant with regard to acquiring any

knowledge about the occurrence and about the mannerism in which it has taken place. The learned counsel for the petitioner further submits that even if the prosecution story is taken as gospel truth, even then no specific role has been ascribed to the present petitioner except of abatement which makes the case of the petitioner one of further enquiry and probe and makes him entitle to the concession of bail as envisaged under Section 497 (2) Cr. P.C. The learned counsel for the petitioner placed reliance on the following case law, Ibrahim and others Vs. The State, 2009 SCMR 407, Muhammad Jamil Vs. Shaukat Ali, 1996 SCMR 1685, 2002 MLD 1151, Malik Muhammad Ishaq Vs. The State and others, 2011 SCMR 1350, Maulana Abdul Aziz Vs. The State, 2009 SCMR 1210, Ghulam Sarwar and others Vs. Sajid Ullah and others, 2005 SCMR 1054, Abaid-ur-Rehman Vs. The State, 1989 MLD 4188 (Lahore) and Mehar Din Vs. Nazar Hussain and 03 others, 1979 SCMR 351.

5. Conversely, the learned counsel for the complainant assisted by the learned standing counsel submits that although no direct evidence or material is available on the file to connect the petitioner with the commission of the alleged offence, except the statement of the complainant but since the offence falls with the prohibitory clause of 497 Cr. P.C, therefore, the concession of bail may be withheld more particularly when challan has already been submitted before the Court. He further submits that the co-accused of the present petitioner who are his real brother are absconding, therefore, the petitioner is not entitled to the concession of the bail.

6. I have heard the arguments of learned counsels and perused the record.

7. There is inordinate delay of three months in lodging the FIR which has not been reasonably explained. On the contrary, the conduct of the complainant and local police is not only dubious but enigmatic as well. The record reveals that petitioner remained on physical remand spreading over ten days and during this period nothing incriminating was recovered from the person of the petitioner, to connect him with the commission of the alleged offence, even prima-facie. By mentioning the name of any accused after due deliberations spread over a period of three months, prima-facie, makes the case of the prosecution highly doubtful and it is well settled law with the mandate of the dictums of the superior courts of the country that benefit of doubt even at bail stage has to be extended to the accused. It is also a well settled law by now, that abscontion of any member of the family cannot be made basis of withholding the concession of bail when case of any accused clearly falls within the ambit of Section 497 (2) Cr. P.C. It has been held time and again by the Superior Courts that commencement of trail does not come in the way of exercising discretion, to grant bail when any accused person successfully been able to bring his case within the ambit of further enquiry. Reliance in this regard is being placed on the case of Muhammad Ismail Vs. Muhammad Rafiq and another, reported as PLD 1989 SC, 585. The question of the liberty of the citizens has been jealously safeguarded by the Superior Courts of the Country, therefore, instant petition is allowed. The petitioner is admitted to bail subject to furnishing of bail bonds to the tune of Rs:2,00,000/- with one surety in the like amount to the satisfaction of the trial court.

8. Before parting with the judgment, I may add that courts of District are expected to be dynamic in their approach while administering justice instead of causal appreciation and by acting in a mechanical fashion. The justification for the curtailment of the liberty of any accused/citizen must be convincing, indoctrinate, logical, suborn and in consonance with the law laid down by the Superior Courts of the Country, rather than travelling on conjecture, suppositions, surmises and feigned reasoning.

(~~SHAU~~KAT AZIZ SIDDIQUI)
Judge

Approved for Reporting.

"Wagar Ahmed"
Blue slip added

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 682-B of 2011.

Afraz Mehmood

Vs

The State etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01) **22-11-2011.** Mr. Sabah Mohyuddin Khan, Advocate
for the petitioner.

Notice to the state as well as
complainant of the case i.e respondent
No.2.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Waqar Ahmed.

02) **29-11-2011.** Mr. Sabah Mohyuddin Khan, Advocate
for the petitioner.
Mr. Arif Mehmood, Advocate on behalf of
complainant/respondent No.2.
Mr. Javed Tanoli, S.I.

Mr. Arif Mehmood, Advocate while
appearing on behalf of the complainant
of the case has filed his power of
attorney with a request that a short
adjournment may be granted enabling
him to prepare his brief.

The learned counsel for the petitioner has seriously opposed this adjournment, however, in the interest of justice the matter is adjourned for tomorrow i.e 30-11-2011. The petition may be put for hearing soon after the hearing of urgent as well as old cases.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Waqar Ahmed.