

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jud. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Crl Misc 37-B-2013.

Titled Wali Shah vs The State etc

- (a) Judgment approved for reporting Yes/ No
- (b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made. Yes No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.37-B-2013

Wali Shah

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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06.02.2013

Mr. Najeeb Ullah Khattak, Advocate for the petitioner.
Malik Fakhar Ali, Advocate for complainant.
Raja Shakeel Abbasi, Standing Counsel with Akhtar, Inspector & Ghulam Mustafa, SI with record.

Through present bail petition, the petitioner seeks post arrest bail in connection with FIR No.217 dated 26.08.2011 u/s 302/34 PPC, P.S. Sihala, Islamabad.

2. The facts in brief as narrated in the FIR lodged by Basharat Ali Shah, SI are submitted below: -

One Azam Khan s/o Hukam Dad Khan, a labourer of Police Foundation, reported the police about the availability of one dead body. He informed that he, along with other labourers were passing from the graveyard gate, found number of people available there. The found a dead body was lying in a ditch. The hands and feet of the dead body were tied with a string. He informed the police on phone. Dead body since was unidentified, therefore, FIR was lodged on behalf of State by Basharat Ali Shah, SI, on the very day i.e. 26.08.2011.

3. Learned counsel for the petitioner argued that earlier the case registered by the police was disposed of as untraced and subsequently reopened on the basis of statement of father of deceased Aleem. He argued that by the said statement, the father of deceased namely Lal Muhammad disclosed that his brother Muhammad Ali confessed his guilt. He also referred PW Muhammad Rahman to whom

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he also confessed his guilt thereby involving his wife and friend Wali Shah. He argued that such statement, after a lapse of about one year, is an imaginary statement having no reason to believe. He argued that only Suzuki FX Car bearing Registration No.8778 alleged to have been recovered from the possession of the present accused, that too, was allegedly used for removing the dead body, which the police drawn from the statement of the petitioner. He argued that vehicle is neither in the name of the petitioner nor any evidence has been collected by the police to connect him with the said vehicle. He argued that though cell numbers are available, but yet, no such evidence has been collected by getting its details. He further emphasized that only the piece of evidence collected by the prosecution is resting upon the extra judicial confession of accused Muhammad Ali, who implicated his wife and the present petitioner. Such type of statement has no legal value, nor same can be considered as piece of evidence.

4. Learned counsel for the complainant argued that it is unbelievable that Muhammad Ali who is an old person could commit such offence of murder by inflicting brick blow, which must have been caused by present petitioner, who is a young man. He argued that since vehicle used in crime has been recovered on the pointation of accused Wali Shah, therefore, he is directly involved in the commission of offence, as such, he does not deserve for grant of bail.

5. Learned Standing Counsel has supported the arguments advance by learned counsel for the complainant.

6. I have carefully heard the arguments, perused the record and the material available.

7. Admittedly, after registration of FIR, the case was disposed of as untraced on 17.11.2011. After about one year, on the statement of Lal Muhammad, the father of deceased Aleem who appeared at Police Station and got recorded his statement u/s 161

Cr.P.C. on 16.10.2012, the case was reopened. In the statement, he disclosed the name of three accused persons i.e. Muhammad Ali, his real brother, his wife and the present petitioner Wali Shah. He alleged that Muhammad Ali Accused confessed his guilt on telephone, therefore, he informed the police. In this regard, PW Muhammad Rahman has also been examined, who too, supported the same story narrated by Lal Muhammad that Muhammad Ali also informed him about their guilt of committing murder of deceased Aleem.

8. From the story narrated and further developments of the prosecution case, the following question raises in mind: -

Whether any piece of evidence is available to connect the petitioner with the commission of offence

9. From the record, it transpires that entire case of the prosecution is resting upon extra judicial confession of Muhammad Ali and recovery of vehicle Suzuki-FX.

10. At the bail stage, the court can evaluate the material available and on the basis of same, opinion could be formed about the reasonableness.

11. The extra judicial confession attributed to Muhammad Ali has been negated by their counsel disbelieving that how he could commit such offence in old age. Moreover, a confession of co-accused cannot be used as piece of evidence against any other accomplice.

12. The law requires that evidence must be direct as envisaged by Article 71 of Qanoon-e-Shahadat Order, 1984. If it is considered in its true prospective, Muhammad Ali is though facing trial but not admitting his guilt. The said confession has not been recorded before any notable or Nail Mard of the locality, therefore, it is merely a version set forth by the father of deceased and Muhammad Rahman PW. In my humble view, such piece of evidence has no evidentiary value at all.

13. So far the concern of recovery of vehicle, no blood stain were found available therein nor there is any other material collected on the basis whereof the present petitioner could have been connected thereto. Particularly when he disowns the ownership of the said vehicle. No documentary evidence has been collected by the prosecution to confirm the ownership of the vehicle. Even the data with regard to the cell phone, conversation between Lal Muhammad, Muhammad Ali accused and Muhammad Rahman PW has not been collected. Therefore, at this verge, the recovery of vehicle, by itself, is shrouded in mystery. Besides these pieces of evidence, there is no other evidence collected. Therefore, I am of the confirmed view that the case of the present petitioner comes within the ambit of further inquiry into his guilt.

14. During arguments, it was observed that the police officials entrusted with the investigation are not performing their duties according to law.

15. Therefore, it is pertinent to point out here the lapses on the part of investigating officer, which are required to be seriously viewed by the high-ups.

16. As observed, proper evidence has not been collected as discussed in para-12 & 13 of this order.

17. It is very strange enough to note that the investigating officer on appearance of the father of the deceased reopened the case already disposed of as untraced.

18. I would like to direct that disposal of the case must be submitted before the concerned Magistrate after finalization of the investigation in any case.

19. Cases after conclusion of investigation are defined as under: -

(a) True Either challan or disposed of as untraced.

Investigating officer is bound to submit the final result of the investigation as required by Section 173 Cr.P.C.



- b) False Clause IO again by virtue of law required to submit such report before the Court of competent jurisdiction following the procedure laid down u/s 173 Cr.P.C. and Police Rules in Chapter XVII as well as his recommendation for prosecution of the persons involved in false accusation by submitting a report before the concerned Magistrate u/s 182 Cr.P.C.
- c) Disposal of the case under cancelled clause

The investigating officer is required by law to submit such elaborate report mentioning reasons of cancellation of the case in any of the clause with his final opinion.

18. Despite the fact and legal principle as discussed from time to time by the superior courts that the courts are not bound to follow the opinion of investigating officer as *ipsi-dixit*. They may form their own view on submitting any report of the concerned police officer about his conclusions of investigation conducted by him.

19. As required by the Police Rules, a crime registered is to be maintained at the police station and as general in the office of District Police Officer, which is required to be maintained to the end result of each case up to the appeal level.

20. In this case, I observe that the investigating officer by his own commenced investigation without apprising the high-ups or concerned court seeking permission for further investigation in a case already disposed of as untraced.

21. Therefore a copy of this order be communicated to the Inspector General of Police, Islamabad & SSP, Islamabad for onward guidance to be communicated to the concerned investigating agency for future.

22. In view of my above observations, instant bail petition is allowed. Consequently, petitioner is ordered to be enlarged on bail on furnishing single surety in the sum of Rs.3,00,000/- (Rupees three lac) with P.R. Bonds in the like amount to the satisfaction of learned trial court.

23. The above observations are tentative in nature and learned trial court shall not be influenced by the above findings.


(~~NOOR-UL-HAQ~~ N. QURESHI)
JUDGE

Approved for reporting



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