

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

WP No. 4213 of 2012

Maqsood Ahmed

Vs.

Additional Deputy Commissioner (General/Inquiry Magistrate & others.

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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08.4.2013

Mr. Muhammad Siddique Awan, learned ASC for petitioner  
Qazi Rafi-ud-Din Babar learned Deputy Attorney-General with Mr. Ali  
Muhammad Malik S.O. Law, Ministry of Interior.

**ORDER**

**MUHAMMAD ANWAR KHAN KASI, CJ:**

The petitioner [Maqsood Ahmed, confined in Central Jail Adyala, Rawalpindi] through this constitutional petition assails the Extradition-Inquiry report dated 07.11.2012, prepared by respondent No.1 [ADC (G)-Inquiry Magistrate], whereby the petitioner, alleged fugitive offender, was ordered to be extradited to UAE in view of a prima facie case against him as per the requirement of Section 10 of the Extradition Act, 1972, without prejudice to the merits of any trial that may be conducted.

2. Learned counsel, in support of this petition, argued that the report is totally illegal, unlawful, erroneous and is not supported by any evidence on record, it is absolutely silent about proof of direct evidence or the report submitted by the UAE Government; Section 12 of the Act [ibid] provides that "if a fugitive offender is not conveyed out of Pakistan within two months, the High Court may order his release unless sufficient cause is shown to the contrary and that there is not a single document to indicate the involvement of the present petitioner, therefore, the proceedings conducted in violation of the mandatory provisions of the Act, 1972 are liable to be set-aside.

3. Learned counsel further submits that if there is any evidence in the report of UAE, that relates

to the accused Mohammad Rahim because said Mohammad Rahim accused has been drawing money from the account of the deceased victim by using his ATM Card and has also been en-cashing the cheques from the banks concerned in the name of Al-Baja Company. He has been using the cars of the deceased victim according to the documents submitted by the Government of UAE. There is not a single document to indicate the involvement of the present petitioner in this case. Even otherwise, this is not a case of direct evidence. This is in fact a blind murder.

4. Conversely, learned Deputy Attorney-General, supported the impugned order by submitting that purpose of the inquiry is only to assess whether prima facie case under Section 10 of the Extradition Act, 1972 is made out or not? The detailed sifting of evidence is not permissible and, therefore, the writ-petition is not competent on this score. The main stance of learned Deputy Attorney-General is that, under Section 13 of the Act, it is the prerogative of the Federal Government to forward the case of extradition which cannot be interfered unless exceptional circumstances exist.

5. I have given due consideration to the submissions advanced by both the sides, perused the material available on record besides the law on the subject.

6. For effective adjudication of the controversy contained in the lis, it will be imperative to go through Sections 8 & 10 of the Extradition Act, 1972, which reads as under:-

**"8. Magisterial enquiry.** --- (1) On receipt of an order under Section 7, the Magistrate shall issue a summon or a warrant for the arrest of fugitive offender according as the cause 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 on 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 is accused or alleged to have been convicted in an offence of a political character or is not an extradition offence.

**"10. Magistrate to report after the enquiry. If after the enquiry under Section 8, the Magistrate is of opinion - - -**

(a) that a prima facie case has not been made out in support of the requisition for surrender of the fugitive offender, he shall discharge the fugitive offender and make a report to the effect to the Federal Government;

(b) that a prima facie case has been made out in support of such requisition, he shall - -

(i) report the result of his enquiry to the Federal Government;

(ii) forward, together with such report, any written statement which the fugitive offender may desire to submit for the consideration of the Federal Government; and

(iii) Subject to any provision relating to bail, commit the fugitive offender to prison to await the orders of the Federal Government."

7. Now, we advert to the facts of the case. The allegation against the petitioner is that, he alongwith his co-accused Mohammad Rahim committed murder of Ehsan Raza Kala Khan, Pakistani national in Al-Garhoud Area, Dubai.

8. The material [Ex. P1 to P74] placed before the Magistrate includes the minutes of the investigation, Dubai Public Prosecution Department. According to statement of Khalid Ashkar Mubarak Chief, CID Department of Al-Rashidiya Police Station, the crime scene and the way of killing the deceased show the involvement of more than one person in committing the crime and we found out a person named Maqsood working with the deceased, he also left on 31.5.2009 i.e. before leaving [Sharif] and it was the later one who has prepared or booked the ticket of Maqsood as we confirmed from the travel office that [Sharif] has come personally to them



and booked two tickets; one tourism for Maqsood and the other for himself on business class and it was found that Maqsood didn't complete except six months in this company and the way he left the company in the absence of the owner of the company, raises suspicions more and his involvement with [Sharif]. [Emphasis provided]

9. It is a case of extradition under bilateral treaty. The **Extradition** in its dictionary sense means, "*the giving up or the delivery of a person to somebody else*". In its technical or legal sense it means, "handing over of a person to the authorities of a foreign State, especially the delivery of a fugitive criminal to the authorities of the State where the crime was committed, for trial or punishment. Historically, extradition was mainly sought or granted for political purposes in respect of persons who having incurred the displeasure of their own Government left the country and sought asylum in another country. The grant or refusal of a request for extradition depended on the whims of the sovereigns who passed arbitrary orders. With the development of democratic institutions and responsible forms of Governments, extradition gradually acquired a legal basis. With the growing consciousness of international co-operation in different spheres of State activities extradition came to be used as a measure for the prevention of crime and to deal with the criminals for whom international frontiers offered no difficult barriers to be crossed.

10. In short, it is one of the most important means of combating international crime. National legislation, extradition treaties, bilateral or multilateral, accession to international conventions and international courtesy now form the usual base of extradition, governing the grant or refusal of a request by the asylum country. Normally the asylum countries would decline to grant extradition in case of political refugees seeking asylum. With the universal recognition and acceptance of



fundamental human rights, the relevant legislation or treaty obligations are expected on the one hand to safeguard individual liberty and the right of asylum of a person, and on the other hand to offer fullest co-operation on reciprocal basis to a foreign State to deal with criminals.

11. After carefully evaluating the case from all the angles, I am of the considered opinion that the exercise of power by the Magistrate after taking into consideration the circumstances of this case, was in accordance with law on the subject as the provisions of section 8 of the Extradition Act do not require the necessity of recording of oral evidence by the prosecution. If some material which has got the force of evidence, is already placed on record by the prosecution, it can be taken into consideration, for coming to the prima facie conclusion with regard to the factum of commission of offence. Circumstantial evidence and even a probability can be considered as evidence in the case and it can be taken into consideration for the decision of the fact in issue. In case in hand, besides the fact that the proceedings in question are in nature of inquiry to be held to see as to whether a prima facie case is made out against the accused to face trial in a criminal case which is pending in the Court of a foreign treaty country, the documents relied by the prosecution [P1 to P74] are, per se, evidence as per provision of section 9 of the Extradition Act and are admissible material which can be looked into by the Government, while passing the extradition order, therefore, the contention of the learned counsel that no evidence is available against the petitioner and that inquiry proceedings were conducted in contravention of the law, is devoid of force. Failure of prosecution to formally tender in evidence the admissible material-evidence is just a technicality and will not adversely effect the case of prosecution as a judicial notice of the said documents can also be taken. In such like

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case, the Enquiry Officer is not bound to hold an inquiry in these cases exactly in accordance with the mode of trial of Session Cases. The Enquiry Officer under section 8 of the Act is empowered to hold inquiry in accordance with the aforementioned mode.

12. The learned Magistrate adopted proper procedure by providing copies of extradition request and its enclosures to petitioner-alleged fugitive offender. The prosecution produced documentary evidence comprising Ex. P1 to P-74. The petitioner was examined under section 342 Cr. PC wherein he denied the charge and after hearing the parties, the learned Magistrate passed the order for his extradition which warrants no interference under the writ jurisdiction. While forming this view guidance is solicited from the law laid down by the Hon'ble Apex Court in case of **Muhammad Azim Malik [PLD 1989 SC 519]**, **Abdul Ghaffar-Vs-Federation of Pakistan [2000 SCMR 1536]**, **Nasrullah Khan Henjra-VS-Government of Pakistan [1998 SCMR 1072]** and **Nargis Shaheen-VS-Federation of Pakistan [1994 SCMR 1706]**.

13. In view of above, the writ petition being forceless is dismissed with no order as to costs.

  
CHIEF JUSTICE

Announced in Open Court on this **23<sup>rd</sup>** day of **April, 2013**.

  
CHIEF JUSTICE

APPROVED FOR REPORTING