

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No. IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. Crd Misc. 661-13

Titled. Ahmad Yar Versus The State

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 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.

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

**CRL.MISC. NO: 661/2013**

**AHMAD YAR   VERSUS   THE STATE.**

| Serial No. of order of proceeding. | Date or order of proceedings | Order with signatures of judge, and that of parties or counsel, where necessary. |
|------------------------------------|------------------------------|----------------------------------------------------------------------------------|
| 1                                  | 2                            | 3                                                                                |

25.11.2013   Sardar Ahmad Khan Maiken Advocate for petitioner,  
Mr.Sanaullah Zahid, learned Deputy Attorney-General  
with Ghulam Habib, SI.

**ORDER**  
**MUHAMMAD ANWAR KHAN KASI, CJ:**

The petitioner [Ahmad Yar] seeks post-arrest bail in case FIR No.313 dated 5.6.2013, registered under section 302/201 PPC at P.S Margalla, Islamabad, after its rejection from the Court of learned ASJ-VI-West, Islamabad, vide order dated 30.10.2013.

2.   Learned counsel submits that petitioner is innocent and has been implicated with malafide intentions by police, while the complainant and private witness Muhammad Asad had exonerated him of the charge and since no other evidence is available, the case becomes one of further inquiry and makes the petitioner entitled for the grant of bail.

3.   Conversely, learned Deputy Attorney-General resisted the petition by stating that trial is likely to be concluded in near future and in presence of any extraordinary ground, the petitioner cannot be enlarged on bail as he is facing trial in a murder case.

4.   Heard & record perused.

5.   The prosecution case is that during the night of 4/5.6.2013, Mst. Musarrat had been done to death by some un-known persons, however, subsequently the wife of the present petitioner moved another application wherein the petitioner was specifically nominated for the murder of his daughter.

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6. It is settled principle that while deciding a bail application, the Court can only see whether the accused is connected with the commission of crime or not and for that purpose, only tentative assessment of evidence is to be made while deeper appreciation of evidence and stance appearing in the case are neither desirable nor permissible.

7. In view of this basic principle, the order of learned ASJ has been examined and it is observed that the same has been passed in contravention of the settled principles and in no way can be appreciated and the same amounts to be a judgment before the trial. For ready reference, the concluding Para 06 of the order dated 31.10.2013 is reproduced hereunder:

"I have perused statements of both P.Ws. Admittedly, they have exonerated the petitioner/accused. But they were declared as hostile by learned law officer and they were subjected to cross-examination too.

In the 2<sup>nd</sup> application given by Mst. Sahab Bibi wife the petitioner, she had specifically nominated Ahmad Yar for the killing of Mst. Musarrat. Furthermore, on 24.06.2013, PW.2 namely Muhammad Asad got his statement recorded U/S 164 Cr.PC wherein he has also categorically implicated the petitioner as accused of instant unjustified murder of an innocent girl.

Medical expert had also opined that Mst. Musarrat died due to bodily torture, which caused rupture of spleen, liver and abdominal blood vessels.

Therefore, since the trial of this case is also before me, so I have observed that both PWs. got recorded their statements collusively just in order to save skin of fanatic killer. A young and delicate girl of 16 years had mercilessly been killed by the petitioner by broking her arms with club and bicycle handle. [Emphasis provided]

Resultantly, while terming statements of both PWs, as hostile and collusive, the same are discarded. Furthermore, concession of bail is not for cruel/fanatic killers. Ergo, the instant petition for post arrest bail is hereby candidly dismissed."

8. It is not difficult to hold that by giving specific observations in the order the tenure of the order, the learned ASJ, has exposed his mind by diving deep into the merits of the case. He failed to keep in mind that at bail stage only cursory perusal of prosecution evidence and material collected by the Investigating Agency is to be taken into consideration.

9. It is not difficult to understand as to how the learned ASJ, while deciding a bail application has observed that **young girl of 16 years had mercilessly been killed by the petitioner by breaking her arms with club and bicycle handle.** Such observation tantamount to erroneous decision and is a miscarriage of justice, which is derogatory to the reputation of the judiciary and detrimental to the common interest of the society and therefore, it is necessary to exercise such discretion with some restraint.

10. It is obviously a case of exercise of jurisdiction not conferred on it. It be noted that no Presiding Officer is robed with and retains unfettered powers to do whatever suits his whims and caprice. In all eventualities, he is bound to abide by and adhere to the law and settled principles.

11. Discussion on merits, especially in murder cases, when the trial is in progress, should be avoided, so that prejudice may not be caused to any of the parties.

12. The law on the subject is specific that guilt or innocence of the accused has to be determined in the light of the evidence which is produced when the trial of the accused begins, therefore, while deciding a bail application, the Courts, must refrain, directly or indirectly from giving any conclusive findings on the question of the guilt or innocence of the accused, and an application for bail may fail, if it cannot be decided without an elaborate sifting of evidence. Guidance may be solicited from case of **Khalid Javed Jeelani Vs The State** [PLD 1978 SC 256].

13. In view of above, the order impugned is not sustainable; being the result of excess of jurisdiction and,

therefore, the same is set aside. Since the learned Presiding Officer has already exposed his mind, it will not be safe to allow him to continue with the trial. Hence, main case is withdrawn from his Court and is entrusted to the Court of learned Sessions Judge-West, Islamabad with the direction to himself proceed with it by keeping on fast track and to decide the same in accordance with the parameters provided on the subject, without being influenced by this Order.

14. Bail petition of the petitioner shall now be considered as pending, which shall also be decided by the learned Sessions Judge-West, Islamabad on its own merits.

15. Petition is disposed of in above terms.

**CHIEF JUSTICE**

Approved for reporting.

Saeed Akhtar  
25.11.2013

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