

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1104/2020

Sajad Khan

versus

Director General FIA, Islamabad & 4 others

Petitioner by: Ch. Khanzada, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Mr. Muhammad Atif Khokhar, State Counsel.
Moeen Masood, Director, FIA, Islamabad Zone.
Qaiser Masood, Additional Director Law, FIA.
Nadeem Zafar, Acting Deputy Director, FIA
AHTC, Islamabad.
Taha Bhatti, S.I. FIA, Islamabad.

Date of Decision: 13.05.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has prayed for release of his real uncle namely Pirran Ditta Khan son of Sajawal Khan on bail, who is presently confined in Adiala Jail.

2. Brief facts referred in the instant writ petition are that Pirran Ditta Khan (accused) is permanent resident of Karri Afghana, Post Office Chak Doulat, Tehsil and District Jehlam and has been living in Pakistan for about 15 years despite having British Citizenship. The accused was alleged to have been conspiring with others residing in United Kingdom (UK) to commit criminal offences there. The matter was referred to Enquiry Magistrate in the year 2016, whereafter warrant of arrest was issued in the year 2018 and eventually the accused was arrested on 14.01.2020 and sent to judicial lockup. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the Extradition Act, 1972 provides for the arrest of fugitive offender whereas the accused was never a fugitive in real terms as he was alleged to have conspired a criminal offence in UK while he was in Pakistan; that despite the fact that accused is of 71 years of

age, he is also a heart patient and suffers from diabetes, whereas due to current outbreak of pandemic COVID-19, the petitioner is extremely concerned about the health of his uncle i.e. the accused; that the health authorities have also warned that old aged and the persons with underlying health conditions are most at risk, and keeping the accused in judicial lockup shall only undermine his fundamental rights to have proper safeguard against a pandemic, hence, the accused may kindly be released on bail in the interest of justice.

4. Conversely, learned AAG and State Counsel together with representatives of the FIA contended that petitioner being nephew of accused Pirran Ditta alias Peter Khan has no locus standi to institute the instant petition on behalf of accused uncle involved in murder case of a West Yorkshire Police Constable namely Sharon Beshenivsky; that the accused after committing murder of said police officer absconded from UK about 14/15 years ago and he could not be traced as there was no IBMS/PISCES System in Pakistan at that time; that the inquiry proceedings regarding extradition of accused are being conducted by the learned Enquiry Magistrate, which will be finalized in near future, therefore, the instant writ petition may kindly be dismissed so that extradition proceedings against accused be finalized in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the Leeds Magistrates' Court issued warrant of arrest against Piran Ditta Khan alias Peter Khan (accused) on 18.05.2006 for the offences referred as under:

1. *That you at Bradford on the 18th day of November 2005 murdered Police Constable Sharon Beshenivsky, contrary to common law.*
2. *That you at Bradford on the 18th day of November 2005 robbed Mohammad Yousaf of a quantity of cash, contrary to Section 8(1) of the Theft Act 1968.*
3. *That you at Bradford on the 18th day of November 2005 had in your possession a fire-arm, namely a Mach 10 submachine gun with intent by means thereof to endanger life, contrary to Section 16 of the Firearms Act 1968.*

4. *That you at Bradford on the 18th day of November 2005 without the authority of the Secretary of State, had in your possession a Mach 10 submachine gun, which was designed or adapted so that two or more missiles could be successively discharged without repeated pressure on the trigger, contrary to Section 5(1)(a) of the Firearms Act 1968.*
5. *That you at Bradford on the 18th day of November 2005 without the authority of the Secretary of State, had in your possession a firearm namely a 9 mm pistol which had a barrel less than 30 centimeters (approximately 12 inches) in length, contrary to Section 5(1)(aba) of the Firearms Act 1968.*

7. While considering the above allegations referred in warrant of arrest of Piran Ditta Khan alias Peter Khan accused in the pending extradition proceedings under Extradition Act, 1972, the inquiry is pending with the Enquiry Magistrate and as such all the necessary documents disclose *prima-facie* involvement of Piran Ditta Khan alias Peter Khan accused in the armed robbery and alleged murder of police official on the relevant date at Bradford, U.K, even it has been argued on behalf of the State that other co-accused who were arrested in this case have already been convicted by the U.K Courts and they are serving their sentence.

8. The tentative assessment of record connects the petitioner with the hideous crime of murder and robbery in which one police official lost her life and other was injured. The said accused Piran Ditta Khan alias Peter Khan remained fugitive from law for approximately 15 years and he was traced by the FIA through their hectic efforts in Pakistan and was taken into custody on 14.01.2020. The entire record is complete with Enquiry Magistrate and it has been assured on behalf of State that inquiry will be concluded within next 03 months.

9. Besides the above referred position, learned AAG and State Counsel have raised the objection on the maintainability of instant writ petition mainly on the ground that it was filed by nephew of the accused Piran Ditta Khan alias Peter Khan and not by the accused himself, when confronted, learned counsel for the petitioner has taken the plea that his uncle Piran Ditta Khan alias Peter Khan,

who is allegedly accused in the extradition proceedings has not been confronted with any material to connect him with any offence committed in U.K territory rather he is shifted in District Jail Adayla due to which no record is available as to what charges were leveled against him. In this backdrop petition has been filed by the petitioner. The argument rendered by the petitioner's side is just an afterthought and as such there is no valid reason and justification referred in writ petition to substantiate the said argument, even otherwise, Section 19 of Extradition Act, 1972 deals with the concept of "released of persons arrested on bail" under this Act, whereby the Criminal Procedure Code, 1898 is applicable in this regard and the Magistrate dealing with the affairs of extradition proceedings has same authority, while considering this position of law the petitioner has no legal argument and justification as to why he has not approached the concerned Court at the first instance rather filed the writ petition directly before this Court. The inquiry against the accused person Piran Ditta Khan alias Peter Khan is likely to be concluded soon. In this eventuality if the said accused is released by this Court on bail, he might abscond again, which is *prima-facie* reflected from his previous conduct of 15 years of abscondance.

10. While considering the provisions of Section 497 Cr.P.C. read with Section 19 of Extradition Act, 1972 including Extradition offences provided in the schedule, the culpable homicide, robbery, adding and abetting all these offences are heinous offences, even under Pakistani law the same fall under prohibitory clause of section 497, Cr.P.C as death sentence is provided in such type of cases.

11. The petitioner has not appended any medical record of accused Pirran Ditta Khan with instant writ petition to justify his medical ground. Even otherwise it is not case of the petitioner that accused is suffering from any disease, which is contagious or requires surgery from hospital, however, in case of any medical emergency, the jail authorities will provide complete medical

treatment to accused under jail manual. The gravity of these offences should have been considered on the basis of their sentence provided in criminal law of England and Wales, which provide the sentence of "life imprisonment" which means "detained for rest of his life without any benefit of payroll".

12. While considering all these aspects, instant writ petition is meritless and the same is hereby dismissed. The accused Piran Ditta Khan alias Peter Khan is not entitled for any concession of bail on any ground. However, while relying upon case reported as 2011 SCMR 1332 (Rehmatullah and another Vs. The State), the Enquiry Magistrate seized with the extradition proceedings is directed to conclude the inquiry within period of 03 months under intimation to this Court. The State as well as Enquiry Magistrate are directed to hand over all the relevant record to the accused Piran Ditta Khan alias Peter Khan before proceeding with inquiry as matter of right under the law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.