

Judgment Sheet

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.592-B of 2011

Waqar Shah

Versus

The State

Petitioner by: ***Mrs. Haroon-ur-Rashid, Advocate & Raja
Waqar Ahmad, Advocate.***
State by: ***Khawaja Javed Iqbal, standing counsel
M. Hanif, A.S.I with record.***

Date of decision: **09.12.2011**

SHAUKAT AZIZ SIDDIQUI; J: Petitioner Waqar Shah seeks bail in case registered vide F.I.R No.183, dated. ~~22~~.04.2010, offence u/s 396, 302/34 P.P.C registered at Police Station Shehzad Town, Islamabad.

2. Brief facts as gleaned out from the FIR, that in the written application moved by Muhammad Imran complainant wherein he stated that on 22.04.2011 at 4:15 a.m five unknown person trespassed into the Dera of Kashmir Khan where his brother namely Zulquranin was serving as watchman. The trespasser grappled with his brother and one out of them fired with pistol of .30 bore which hit at the locale of navel of Zulqurnain and second short fired, hit on his right thigh who fell down and was brought to "Benazir Buhtto, Hospital" where he scumbed to the injuries. This information was passed to the complainant by Munawar Hayyat.

3. The petitioner was arrested on 23.05.2011 exactly after one year of his nomination in the supplementary statement of Munawar Hayyat, made on 23.05.2010 and remained on physical remand of 11 days. The petitioner applied for bail after arrest but same was declined vide impugned order dated.20.09.2011 by learned Additional Sessions Judge, Islamabad.

4. The learned counsel for the petitioner submits that petitioner is not nominated in the FIR, Munawar Hayyat implicated him for the first time through supplementary statement dated.23.05.2010, after more than a month of the occurrence. He further submits that although petitioner was picked during the identification parade held on 10.06.2011 but witnesses ascribed no role whatsoever to the petitioner. He also contended that during the course of investigation and physical remand, nothing incriminating was recovered from the person of the petitioner. In support of his contention, the learned counsel relied on pronouncements of the court of Apex reported as ABID ALI alias ALI Vs. THE STATE (2011 SCMR 161), TAHIR ABBAS Vs. THE STATE (2003 SCMR 426).

5. On the other hand the learned standing counsel submits that petitioner is involved in a most heinous offence of dacoity with murder, punishment of which is ~~death~~ which falls within the prohibitory clause of Section 497(1) Cr. P.C. He also submits that challan has been submitted in

court and even charge has been framed. However, on court question he very honestly informed the court that during the identification parade witnesses ascribed no role to the petitioner, as such very identification parade to the extent of petitioner is of no significance and value to the prosecution.

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

7. The record reveals this fact that for want of incriminating material, petitioner was declared innocent by the local police. In supplementary examination dated.23.5.2010, Munawar Hayyat, nominated the petitioner after more than a month of the occurrence but still failed to mention any source or reference on the basis of which he implicated the present petitioner. It is held time and again by the Superior Courts of the country that supplementary statement, in most of the cases is result of an after thought, which lacks credence and strength of admissibility in evidence. Although, the petitioner was picked in the identification parade but same is of no use to the prosecution as no role is ascribed to the petitioner. Even otherwise, identification parade is a weakest type of evidence and it becomes a waste paper when no role is ascribed to the accused. In the case titled MEHMOOD AHMAD and 03 others Vs. THE STATE and another, the Hon'ble Supreme Court has held as under:-

"Picking up of the accused in the identification parade without describing the roles played by them in the crime was illegal rendering the proceedings unreliable having no evidentiary value."

8. It may be noted that description of the accused person is not provided in the FIR, therefore, picking of the accused in the identification parade is febrile and feeble material for the prosecution.

9. It has also been held by the Hon'ble Supreme Court that commencement of trial can not be made basis of refusal of bail, if petitioner succeeds in bringing his case within the ambit of further inquiry as envisaged under Section 497 (2) Cr. P.C. In this regard, I am fortified with the case law; ABID ALI alias ALI Vs. THE STATE (2011 SCMR 161) and MUHAMMAD ISMAIL Vs. MUHAMMAD RAFIQUE & ANOTER (PLD, 1989, SCMR 585).

10. In this view of the matter, the instant petition is allowed, petitioner is admitted to bail subject to furnishing of surety bond of Rs:100,000/- (one lac) with two sureties of the like amount to the satisfaction of the trial court.

11. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or otherwise by the trial court

(SHAUKAT AZIZ SIDDIQUI)
Judge

"Waqar Ahmed"

Approved for Reporting.