

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Crl Misc 198-B-2012

Titled Qamar Abbas Shah Vs 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 the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

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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.**

Criminal Miscellaneous No.198-B/2012

Qamar Abbas Shah vs. The State.

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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18.4.2012. Mr.Anwar Ali Shah, Advocate for petitioner.  
Muhammad Anar SI, with record.

The bail application moved on behalf of petitioner, seeking post arrest bail in connection with FIR bearing No.94 dated 25.3.2011, Police Station Sihala, Islamabad under section 302, 109, 34 PPC.

2. As per the facts narrated in the FIR lodged by complainant Munir Ahmed SI, Police Station Sihala, Islamabad on behalf of state, on 25.3.2011, narrating therein the incident allegedly occurred on the same day at 7:00am. Prosecution story narrated by the said S.I inter-alia that he being ASI of P.S Sihala proceeded on patrolling duty with Abdul Qudoos Constable in government mobile No.GF780 with driver Ishtiaq Ahmad. From 12 midnight to 8:00 am in the morning they were on duty. During patrolling at about 7:00am when they reached at G.T Road running towards Rawalpindi near opposite DHA gate No.4, found dead bodies of



two young boys lying on left side of the road. On their search, respective purses were recovered from their pockets, in which Afghani passport containing name Ali Haboot son of Said Jahan r/o Kabul and from another showing name Ali Raza son of Rajab Ali, r/o Kabul. Both appeared to have been killed by fire arm weapon and thereafter thrown on the side of road by some unknown accused person. Such FIR registered where after during course of investigation, present accused was also arrested by them on the basis of statement of owner of hotel where allegedly both the deceased were residing in a room of hotel.

3. Learned counsel for the petitioner argued that PW Babar owner of hotel is the only person who disclosed the name of petitioner as he arranged the room for both the deceased and found leaving the hotel with them before their dead bodies were recovered.

4. He argued that allegedly a pistol was recovered from the possession of accused but the report in respect whereof obtained by the prosecution from the Forensic Science Laboratory, Punjab, Lahore in respect of recovery of that pistol is negative and empties found from the scene of incident are not

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matching with the pistol recovered from his possession. He also argued that besides the evidence referred above, there is no other iota of evidence collected against the accused and last seen with the accused person carries no evidentiary value. No perfect proof is available to connect the accused with the commission of offence and the incident being un-witnessed on the basis whereof accused can not be involved nor there is any reasonable ground available to connect him with the commission of offence. So far as the concern of recoveries that too does not implicate him nor connects him with the offence. Therefore, it becomes the case of further inquiry into the guilt of accused. In support of his contentions, he relied upon case law reported in 2000 P Cr.LJ 842 (Karachi), 2000 P Cr.LJ 1204 (Karachi), 2000 P Cr.LJ 768 (Lahore), 2005 YLR 2418 (Peshawar), 2011 P Cr.LJ 232 (Karachi), 2010 P Cr.LJ 392 (Karachi) and 2009 P Cr.LJ 1085 (Peshawar).

5. It is astonishing to note that counsel appearing for state mostly remained absent, therefore, matter was called twice but none appeared, however, investigating officer himself argued that beside above referred evidence there is other two pieces of evidence available

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against the accused one is the confessional statement of co-accused Habibullah who has given the name of accused. Moreover, the mold of foot prints were obtained on the very day when dead bodies were recovered from the scene of incident and same are matching with the shoes of the accused recovered from his possession as such strong circumstantial evidence available against him to connect him with the commission of offence.

6. I have gone through the record, police papers produced, authorities referred as well as arguments heard advanced by both the parties, heard.

7. From the record, it appeared that there is no eye witness of the incident. Merely dead bodies of two deceased were available on the scene of incident after recovery thereof the ASI lodged FIR at Police Station Sihala, Islamabad. During course of investigation, on examining PW Babar owner of Crown City Hotel where both the deceased were residing in room, allegedly the said Babar PW has pointed out two very important features, one, rooms hired for the deceased on the day when dead bodies were recovered, he found him proceeding out from the hotel with both the deceased, therefore, is a

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last seen with the deceased is only evidence collected.

8. Another piece of evidence by which the petitioner is going to be connected is a recovery of pistol which on examining through Forensic Science Laboratory having no significance or positive report to connect the accused with the commission of offence. The another very material evidence as disclosed by prosecution that the molds of shoes taken from the scene of incident are matching with the shoes of accused again leaving towards room of inquiry as there are so many shoes of the same company owned by many other persons, therefore, can not be considered as conclusive proof to connect him with the commission of offence.

9. So far as the concern of last seen, that too is not a strong piece of evidence leading towards the conformity regarding involvement of the accused with the murder. The evidence lastly pointed out by the I.O that statement of accused Habibullah was recorded u/s 164 Cr.PC by which he confessed his guilty and by naming the present accused involved him as accomplice by inculcating himself.

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10. I while going through the same found nothing available to suggest any incriminating

part respecting commission of offence. Confessional statement by itself only showing the strange relation between deceased Ali Haboot and accused Habibullah which too can not be considered as a piece of evidence could be adversely used against the accused. Through out statement u/s 164 Cr.PC, no where accused Habibullah has slightly alleged that present accused committed offence conjointly with him. Therefore, such a piece of evidence is also not helpful for prosecution to connect him with the commission of offence. Moreover, case law cited by learned counsel for the petitioner is sufficiently covering such aspect of last seen which can not be treated as piece of evidence having much reliance. As such same can only be scrutinized at the stage of trial but nothing adverse available in it to form an adverse opinion against the accused.

11. The identification of molds which is a piece of evidence relied upon by the prosecution is also insufficient in view of above discussions as well as Article 22 of Qanun-e-Shahadat Ordinance 1984 which is to be established being relevant on such scale.

12. Like-wise there is no direct evidence available on record as such the whole case in

view of Article 71 of Qanun-e-Shahdat Ordinance 1984 requires oral evidence must be direct, is lacking in the instant case.

13. Therefore, I am of the view that case of present petitioner requires further probe into his guilt. In my humble view, he is entitled for grant of bail. Therefore, he is ordered to be enlarged on bail subject to furnishing surety in the sum of Rs.500,000/- with PR bonds in the like amount to the satisfaction of trial court.

14. The expeditious trial is the right of petitioner, therefore learned trial court is directed to conclude the trial within a period of six months without being influenced with the observations made above, which are, tentative in nature.

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

Imran

wsl

Announced in open Court on 19-04-2012.

Blue slip added.

*Approved for reporting*

**JUDGE**

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