

ISLAMABAD HIGH COURT, ISLAMABAD

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

(REVISED FORM OF BLUE SLIP)

Case No. W.P. 4706 - 2013

Titled

Mohammad Zubair

Vs

Federal Govt.

(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).

David  
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**  
**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.4706 OF 2013**

**Muhammad Zubair**

**Vs.**

**Federal Government of Pakistan through Secretary, Interior, Islamabad**

**Petitioner by : Dr. Abdul Basit, Advocate**  
**Respondent by : Malik Zahoor Akhtar Awan, Standing Counsel.**  
**Date of hearing : 30.01.2014.**

**NOOR-UL-HAQ N. QURESHI J.** Through this writ petition, the petitioner has prayed as under: -

- i) In the absence of condition-precedent of publication of statutory notification in the Gazette of Pakistan as contemplated by Section 4 of Extradition Act, 1972, the request made by Respondent U.K. Government for return of the petitioner to stand a murder trial in UK cannot be processed in Pakistan.
- ii) Extradition proceedings being currently conducted by Respondent Additional Deputy Commissioner/Assistant Commissioner are coram-non-judice and are liable to be permanently restrained.
- iii) Any trial of the petitioner in UK will deprive him of the benefits of offering Badle-e-Sulah/Diyat available to him in the event of such a trial taking place in Pakistan under Pakistani Laws.
- iv) Even otherwise, petitioner cannot be extradited in terms of Section 5(2)(g) of the Extradition Act, 1972, ibid, as a fair trial is not possible in the peculiar facts of this case.
- v) Be that as it may, petitioner is a citizen of Pakistan who was found in Pakistan at the time of his arrest on 29.11.2013, he is entitled to be tried on any offence alleged to have been committed by him in UK in Pakistan as mandated by Section 4 of PPC.

2. Facts giving rise to the disposal of instant writ petition are that two persons namely Ahmedin Sayedkel and Imran Khan alleged to have been murdered. The present petitioner, who is a taxi driver by profession, lived with the deceased alongwith his wife Kainat Bibi, a six years old daughter and Arab Sultan her aged mother. The weapons of offence alleged to have been

used were items of house gym equipments available in the living room i.e. a dumb-bell and a weight-lifting hammer. However, only a dumb-bell alleged to have been wielded by a co-accused of the petitioner namely Sabir Hussain was recovered being blood-stained, when on 28.06.2011, aforesaid Sabir went voluntarily to the police and confessed having assaulted the victims by describing a major role of the petitioner. On the day of murder i.e. 10.05.2011, deceased Kheyl sent a text message on the mobile of Kainat Bibi, the wife of petitioner, with whom, he developed illicit relations. The petitioner treated his wife with compassion and forgave her for the sake of their minor daughter by allowing her to return to the matrimonial home, where she was living on the day of murder. There-after, the deceased Kheyl kept on persisting Kainat Bibi to abandon her matrimonial home. She informed the petitioner, who called deceased Kheyl advising him not to do so, but he threatened to forcibly take Kainat Bibi from the home. On the day of occurrence, deceased Kheyl telephoned Kainat Bibi, where-after a series of calls were made by Arab Sultana (the mother of petitioner) to the petitioner, whereas the murder was taken place after these calls. On 11.05.2011, the petitioner came to Pakistan, where he was arrested from his permanent address in Attock District and since then, he is confined in Adyala Jail, Rawalpindi. On 24.02.2012, Mr. Justice King of the Bradford Crow Court proceeded to sentence Kainat Bibi, Arab Sultana and Sabir Hussain holding Sabir guilty of manslaughter while the females were found guilty of preventing the course of justice and attempting to eliminate incriminating evidence. On 29.11.2013, SHO, P.S. Hazro has arrested the petitioner pursuant to a warrant of arrest issued by the respondent Magistrate. Ever since, he has been lodged in Adyala Jail waiting for the outcome of the proceedings being

currently conducted by the respondent Magistrate on the Extradition Request of Respondent Foreign State. The petitioner has been advised to challenge their validity and to seek a declaration that petitioner cannot be extradited to UK, hence this petition.

3. Later on, two CM Nos.551/2014 & 553/2014 were filed by the petitioner. Through CM No.551/2014, issuance of Notification has been challenged, as the same was issued much later to the filing of this writ petition, therefore, the arrest of the petitioner on 29.11.2013 would have been a valid action, if the condition for issuance of a Notification was fulfilled prior to the date of arrest, therefore, the Notification produced by respondent No.4 with its parawise comments cannot be taken into consideration. It has been requested through the above CM that Notification produced and relied upon by the respondent Government issued during pendency of this writ petition is hit by the doctrine of Lis pendens therefore, it should not be taken into consideration.

4. Through CM No.553/2014, it has been prayed that Order to discharge the petitioner may be made in terms of Section 12 of the Extradition Act, 1972 for not having been conveyed out of Pakistan within the stipulated period of two months from the date of his arrest on 29.11.2013.

5. It has been contended by the learned counsel for the petitioner that respondent Foreign State i.e. United Kingdom falls within the definition of Section 2(c) of Extradition Act, 1972. It is also a non-treaty State within the contemplation of Section 4 thereof. Pakistan has Extradition Treaties only with 27-States in which Respondent UK is not included. According to the said provision, return of the petitioner to UK can only take place, if a direction is

issued by the Respondent Federal Government, if it considers expedient to do so for which, condition precedent for extradition of the petitioner is the issuance of a Notification in the Gazette of Pakistan. In the absence of such Notification, no extradition proceedings can take place. He has further contended that it shall be seen on the face of the statute, the condition precedent for authorization to conduct any magisterial enquiry such as that conducted by the Respondent Magistrate. No such enquiry can take place in the absence of the statutory Notification *ibid*, hence the inquiry is also challenged as *Coram-non-judice*. It has further been contended that the petitioner is entitled to the benefit in view of Section 5(2)(g) of the Extradition Act, 1972. It is the stance of the petitioner that the plea of grave and sudden provocation available to him in his capacity as a 'QAWAM' for his wife shall be prejudicial on account of his religion, if trial takes place in UK. Reliance has been placed on the case of *Federation of Pakistan V. Gul Hassan Khan* reported as PLD 1989 SC 633. It is argued that petitioner being the citizen of Pakistan and in view of the fact that he was arrested in Pakistan therefore in terms of Section 4 PPC, he is entitled to be tried in Pakistan even on the charge of murder committed in UK. The petitioner intends that Extradition Request be declined because if he is tried in UK, he shall stand deprived to offer *Badl-e-Sulah/Diyat* to the legal heirs of the deceased, which in case of trial in Pakistan, shall be available to him. In this regard, he has placed reliance on a case reported as PLD SC 274. The Extradition Proceedings currently being conducted by the Respondent Magistrate are *coram-non-judice*, as the petitioner is not liable to be returned to the UK.

Learned counsel for the petitioner has further contended that the judgment rendered by the Jury and the decision made by the British Court while

sentencing co-accused of the petitioner has virtually pre-empted the outcome of any trial to be held in future.

6. Respondent No.4 has submitted parawise comments. It has been contended that it is correct that United Kingdom is not included in the list of those countries having Extradition Treaty with Pakistan Government. However, as per Section 4 of Extradition Act, 1972, if the Federal Government is pleased to issue a Notification under the said Section, then Extradition process can be concluded by the Inquiry Magistrate nominated by the Federal Government under the said Act. In this case, said Notification has been issued by the competent authority. The warrant of arrest of petitioner issued by the answering respondent is as per law. Request for dismissal of instant petition has been made through parawise comments.

7. Arguments of learned counsel for the petitioner have been heard and record, relevant provisions of law and parawise comments submitted by respondent No.4 have been perused.

8. Since the petitioner has mainly agitated the legal grounds based upon Sections 4, 11 & 12 of the Extradition Act, 1972. The other legal consideration for his trial in Pakistan in view of principle enunciated by Section 4 PPC & 188 Cr.P.C. is based upon pre-determination by Mr. King, the Judge at UK, who earlier proceeded part of the trial against co-accused. Another legal issue raised is with regard to application of law, if ultimately, the petitioner's plea of grave and sudden provocation available to him in his capacity as a 'QAWAM' for his wife, which cannot be agitated before Mr. King, the Judge in UK, if trial takes place there.

9. I would like to discuss the applicability of relevant provisions of law. Section 4 of the Extradition Act, 1972 depicts issuance of Notification and its publication in the official gazette for enforcing the provisions of Extradition Act with the accused or convict, if offence takes place within the jurisdiction

of a Foreign State having no Extradition Treaty with Government of Pakistan.

The law does not mandate its application as a hard or fast rule, as it depicts the word 'may' by Notification in the official gazette direct that modifications, exceptions conditions and qualifications if any, as may be specified therein, have effect in relation to that State. Instead whereof, requirement of Section 7 of the said Act provides the mandatory procedure, which only manifests issuance of an order by the Federal Government to enquire into the case to any Magistrate of 1<sup>st</sup> Class who would have had jurisdiction to enquire into the extradition offence. In this regard, copy of official gazette dated 28.12.2013 has been made available, which is taken on record.

10. In this regard, the relevant record from the Office of Magistrate was called, which contained letter issued by the Federal Government regarding issuance of Notification, which later on, was published in the official gazette on 28.12.2013. The record shows that Magistrate has conducted enquiry u/s 8 & 9 of the Extradition Act which has not been agitated by the learned counsel for the petitioner.

11. So far the application of Sections 11 & 12 of the Extradition Act, 1972 is concerned, the proceedings initiated by the Enquiry Magistrate were stopped as a result of an interim order passed by this Court on 24.12.2013 directing the parties to maintain status quo with regard to custody of the accused. It is made clear that when interim order was passed, learned counsel for the petitioner pointed out that only final signature of the Magistrate was required there-after, the custody of accused/petitioner would be dispatched to UK.

12. Likewise, regarding application of Section 12 of the Act *ibid*, present petition was entertained by this Court, requirements whereof have been observed by the Enquiry Magistrate.

13. As regards the contention with regard to application of Section 4 Cr.P.C., it is a pre-requisite condition that accused is not found at any place in Pakistan under any circumstances and certificate of political agent or sanction of Federal Government, as the case may be, is obtained. If either of the conditions is not fulfilled, a Criminal Court in Pakistan cannot have the extra territorial jurisdiction to try a person alleged to have committed an offence outside Pakistan, but as the enquiry is going to be conducted against the petitioner, which has been intervened by this Court *vide* interim order, therefore such condition is not available to the petitioner.

14. So far the concern of the allegation of biasness of the Judge at UK is concerned, in this regard, it is observed that there may be some observations against co-accused given in the trial concluded against him, but on producing accused/petitioner before the court concerned, he will have to be given opportunity of hearing and producing his defence as apparent from overview statement made on 09.11.2012 available at page-23 of this petition, which is reproduced hereunder: -

***"The evidence of Michelle Walton is being covered by a colleague at the Forensic Science Service, Elisabeth Harris. These witnesses will be available for the trial if Mr. Zubair is returned to the United Kingdom as a result of this request for extradition".***

Otherwise, if the case would have been proceeded before any court having jurisdiction to try the offence, observation with regard to commission of offence would have been same, therefore, this cannot be considered as

*Dr* biasness on the part of the Judge, Mr. King at UK, rather it should be



considered as a ground for proceeding the case at Pakistan nor law requires the same.

15. The petitioner since has been charged with heinous offence of double murder committed within territorial jurisdiction of United Kingdom, where trial of co-accused is going on, the accused has to appear for the trial there, whose intention to evade from the same shows that he is not ready to face the trial in United Kingdom.

16. Otherwise, in the absence of any material, the accused/petitioner cannot be tried outside the jurisdiction of the said Court, where trial is going on or investigation is being conducted within jurisdiction of a particular Police Station at United Kingdom.

17. Neither any provision of law exists to extend such grace to the accused/petitioner nor any ground is available to grant him such extraordinary relief.

18. It is further observed that of course, the relaxation provided under the Islamic Law in the capacity as a 'QAWAM' for his wife would not be available to the petitioner at United Kingdom, but every offence has to be tried in accordance with law of land.

19. In view of what has been discussed above, I find no force in the instant writ petition, which is hereby dismissed along with above mentioned CMs.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Zawar

*Approved for reporting.*

*Blue slip a dkd.*  
*Wd*