

IN THE LAHORE HIGH COURT, LAHORE

Criminal Revision No. 66407 of 2025

The State and 05 others.

S.No. of order/ proceeding.	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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Through this criminal revision petition validity of an order dated 16.07.2025, passed by learned Additional Sessions Judge, Lahore, has been assailed, whereby an application moved by petitioner Mst. Zubaida Khanum (complainant of the case) for recording her evidence through video link was turned down.

2. According to the brief facts a criminal case F.I.R. No. 2487 of 2023, dated 21.05.2023 stood registered with Police Station Harbanspura, Lahore, for offences under Sections 302, 34, 109 and 114 of PPC, under the authorship of petitioner (Zubaida Khanum) with the averments that two unknown persons came on Motorcycle on 21.01.2023 at about 05:40 p.m. and made straight fire shots upon her husband (Muhammad Ashfaq), who had arrived from Kuwait to participate in the marriage ceremony of his nephew. Motive behind the occurrence stated to be was that there was a house of her father-in-law, which was purchased fraudulently by one Usman Rasheed son of Abdul Reasheed and her husband

(deceased) had made a claim regarding the house. The house was later on grabbed by said persons. One Iqbal alias Bhola harbored the said grudge in his mind and he used to issue threats towards complainant's family, as such said Iqbal alias Bhola and his sons namely Ahmad, Fahad and nephew Farhan alias Fani Kuwetia and Usman Rasheed committed the murder of husband of the petitioner in consultation with each other.

3. The learned counsel for the petitioner mainly focused on the point that husband of petitioner was murdered; thereafter she was issued threats from the accused party, due to which she migrated to Karachi. Petitioner/ complainant was under threat from the accused party (respondents No.3 to 6); and in case petitioner came to Court premises to appear before the learned trial court at Lahore, she is likely to be killed, therefore, her evidence be recorded through video link for the safety of her life.

4. Conversely, the learned Deputy District Public Prosecutors assisted by learned counsels for respondents opposed present petition vehemently and rigorously on variety of the grounds. They added that apprehension expressed by petitioner is ill-founded and without any base. She may be provided security by the learned trial court for appearance in the court; petitioner has made an attempt to cause inordinate delay in the conclusion of trial, as such the impugned order passed by learned trial court was just and proper in circumstances.

5. Arguments heard. File perused.

6. Perusal of the record speaks that husband of petitioner/complainant was living abroad at Kuwait for gain, who had come Pakistan to participate in the marriage ceremony of his nephew and was allegedly murdered due to some property dispute. Apprehension shown by petitioner/complainant was that her husband was got

murdered through hired shooters and thereafter she and her children were also subjected to threats of dire consequences, therefore, she was constrained to sell out other properties and left the Lahore to save herself as well as her children.

7. For the protection of witnesses and other persons connected with the investigation of criminal case, “The Punjab Witnesses Protection Act, 2018” (Act, 2018) was promulgated, which has established a frame work for witness protection including measures like physical protection, video links and restricted court room entry and protection for witnesses from being cross examined by the accused directly, particularly for serious and sexual offences. Preamble of the said enactment stating its purpose, aims and justification, is being produced below for the facility of reference.

“It is necessary to provide for measures to protect witnesses or other persons connected with the investigation, prosecution and trial of certain criminal proceedings relating the offence of terrorism, sexual offence or any other serious offence; and, to provide for ancillary matters.”
(emphasis supplied)

Under Section 10 of Act, 2018 empowers the court to examine a witness through video link at a location outside the court and if it is not possible to have a video link in the court room, the court may move to the place, where such facility is available. I think it appropriate to have a look of said provision of law, which reads as under:-

“Sec. 10. Video link.- (1) *When so directed by the court, the Unit shall take special measures so that the court may examine a witness through video link at a location outside the court.*

(2) *Where it is not possible to have a video link in the court room, the court may move to the place, as determined by the Government in consultation with the High Court, where such facility is available.”*

Moreover, article 164 of Qanun-e-Shahadat Ordinance, 1984 gives authority to the court to admit any evidence that may have become available, because of technological

advancement. This provision can reasonably be invoked for recording the evidence through video link. It reads as under:-

“Art. 164. Production of evidence that has become available because of modern devices or information system, etc.—Depending on the nature of case and circumstances, the Court may, if deem appropriate, allow to be produced any evidence or witnesses recorded by the Court through the modern devices or techniques including video calls, viber, skype, imo, whatsapp, facebook, messenger, line caller and video conference, etc.”

8. Accumulative effect of said provisions was that by invoking both the said provisions, the learned trial court may record a witness through video link, if the circumstances of the case so required.

9. The learned law officers as well as learned counsel for respondents/accused raised the objection that under Section 353 of Cr.P.C. all the evidence must be taken in the presence of accused (or when his personal attendance is dispensed with in the presence of his pleader), therefore, recording the evidence through video link shall be in flagrant violation of the said provision of law.

10. Said proposition was answered in affirmative in detail by apex court in a judgment dated 02.09.2022, passed in Civil Petition No.1795/2022 in case titled “*Mesha Shafi Vs. Ali Zafar*”, wherein it was held that the term “presence” used in the said provision should be interpreted to include constructive presence to allow the recording of evidence through video conference. Meaning thereby that virtual attendance via video conferencing can be considered a substitute for physical presence. The above judgment further noted that “virtual attendance” of a witness in the court through the medium of video conferencing enables the judge and other persons present in the court to see the witness and hear what he says and vice versa. Such attendance is thus, in effect, in open court, and his evidence is also recorded under the personal superintendence of the judge. The judge under

whose superintendence the evidence through video conferencing recorded can satisfy himself about the free will of the witness present on screen as he does about the witness present physically in court by questioning him in this regard and ensuring that he is not under the immediate influence of any other person.

11. Reference in this regard may also be had from a Divisional Bench case of this Court titled 'Munawar Hussain and another v. The State' (2020 P.Cr.LJ 1184), wherein Divisional Bench allowed the recording of statement of witness through video link further holding that whenever in the course of an inquiry, a trial or other proceedings a witness is required to be examined through video link, the certain protocols should be observed to ensure its reliability. Relevant portion of the judgment highlighting the said protocols reads as under:-

- “(i) *The video conferencing should be held at the place approved by the Court.*
- (ii) *If the witness is in Pakistan, a commission should be issued to the Magistrate of the first class under section 503 or 506 of the Code to facilitate and supervise the process as hereinafter mentioned.*
- (iii) *If the witness resides in any country with which Pakistan has reciprocal arrangements, a commission as aforesaid should be issued to such Court or Judge having authority in this behalf as may have been specified in terms of subsection (2-B) of section 503 Cr.P.C. However, where no such arrangements exist, the statement of the witness must be recorded in Pakistan Embassy/High Commission or Consulate or, if the Court permits, in a Notary's office in the presence of an officer of that Embassy/High Commission or Consulate or the Notary, as the case may be.*
- (iv) *The judge, magistrate, officer of the Pakistan Embassy/High Commission, Consulate or Notary, as the case may be, must ensure that the witness is alone at the time of video conference and is not coached, tutored or prompted and he must submit his certificate to this effect to the Court.*
- (v) *Before examination of the witness under audio-video link starts he must submit to the judge, magistrate, officer of the Pakistan Embassy/High Commission, Consulate or Notary, as the case may be, his original identity card, passport, driving licence or other document to prove his identity along with an affidavit (signed and thumb*

marked) duly verified before a Judge, or a Magistrate or a Notary that the person who is shown as the witness is the same person who is going to depose on the screen. The said identification document and affidavit must be shown on the screen to the other side and the officer concerned must forward a copy of these papers duly attested by him in a sealed cover to the Court (for which expenses must be paid to him in advance) which must make it part of the record.

- (vi) As soon as the identification part is complete, oath should be administered to the witness (if required by law) through the media according to the Oaths Act, 1873, or any other law for the time being in force.
- (vii) The witness should, as far as possible, be examined during the working hours of the Courts in Pakistan.
- (viii) The proceedings must be conducted, as far as practicable, without any interruption and no adjournment should be granted unless the Court thinks that it is extremely necessary to meet the ends of justice.
- (ix) The Court must provide to the witness copies of any documents that he may be entitled to demand under any law for the time being in force.
- (x) The Court must record any remark as is material regarding demeanour of the witness while on the screen and should note the objections raised during the proceedings either manually or mechanically.
- (xi) Deposition of the witness either in the question-answer form or in the narrative form must be reduced to writing by the Court and must be read over to the witness and if possible his digital signature must be obtained as a proof of its correctness. After that the Presiding Officer must also sign it and make the same part of record.
- (xii) The visual must be recorded at the Court's end, secured with the seal of the Court and made part of the record.
- (xiii) If a video link fails during the proceedings, the Court may adjourn the proceedings or make such other order as it may deem appropriate.
- (xiv) In case of perjury the Court would be competent to proceed not only against the witness who gave false evidence but against the person who abetted it.
- (xv) Unless the Court directs otherwise, the expenses for the arrangements should be borne by the applicant who wants this facility. The same should be deposited with the Court in advance.
- (xvi) The Court may put such other conditions and issue directions as may be required in the circumstances of a case to meet the ends of justice and attain the object.
- (xvii) Depositions of the magistrates in terms of Letter No.2045/MIT/HC/2017 dated 27.1.2017, supra, and other official witnesses should be recorded in accordance

with the instructions issued by this Court from time to time.

(xviii) The Court may at any time vary or revoke a direction/permission for examination of a witness on video link.

(xix) The Court must not make a direction for examining a witness on video link if:

- (a) the necessary facilities are not available or cannot reasonably be made available, or*
- (b) the Court is satisfied that the evidence can more conveniently be given or made in the courtroom, or*
- (c) the Court is satisfied that the direction would be unfair to any party to the proceedings, or*
- (d) the Court is satisfied that the person in respect of whom the direction is sought would not give evidence or make the submission.”*

12. Petitioner is complainant as well as essential witness of the case. Witnesses are most important component of a successful justice system. The prosecution of crimes and the investigation process are both dependent upon the assertions and authentication of witnesses, as such State has an obligation to protect the witnesses. Petitioner seems to be under threat. It may be very risky for her to appear before the learned trial court for recording her evidence. I, therefore, set aside the impugned order dated 16.07.2025 and allow present petition.

13. Learned trial court is directed to record the evidence of petitioner/complainant through video link/video conferencing, etc. observing above protocol.

(TANVEER AHMAD SHEIKH)
JUDGE

APPROVED FOR REPORTING.

JUDGE