

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.Misc.BCA No.157-P/2015**

Date of hearing: **04.05.2015.**

Petitioner (s) : **Kifayat Ullah by Mr. Ishtiaq Ibrahim,**  
**Advocate.**

Respondent (s) : **Sana Ullah by Mr. Astaghfirullah, Advocate**  
**and the State by Malik Manzoor Hussain,**  
**Advocate.**

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Questioned

herein is the order dated 27.09.2014, passed by learned Judicial Magistrate-II, Peshawar whereby respondent-accused Sana Ullah has been granted post arrest bail in case FIR No.529 dated 18.07.2014, registered under sections 302/109/34 PPC read with S.15 AA at Police Station Mathra, wherein respondent-accused has been charged for committing the murder of his wife Mst. Kaukab.

2. Arguments heard and record perused.

3. Admittedly, none has come forward to furnish the ocular account of the incident. Initial report has been lodged by the petitioner, husband of deceased Mst. Kokab. He too is not an eyewitness of the occurrence; rather, he on

receipt of information qua death of his wife, rushed to his house from his office and found her dead. He while reporting the incident alleged the incident to be a suicide committed by his wife. Later on, Kifayat Ullah, father of deceased in his statement under section 164 Cr.P.C., charged the petitioner/his son-in-law for Qatl-e-Amd of the deceased, but he has not furnished the source of information and his satisfaction on the basis of which he came to know about complicity of the petitioner in commission of the offence. At the moment, the only evidence strongly relied upon by the learned counsel for the petitioner, is autopsy report of the deceased. According to the learned counsel no charring or blackening marks have been observed on entrance wound over the skull of the deceased by the Medical Officer while direction of the entrance wound is from left side skull making its exit towards right side of the skull, which squarely belies the version of the respondent/accused (then complainant) and strongly suggest that a homicide has been given the colour of suicide by the accused, therefore, he being husband of the deceased, in absence of any plausible explanation on his part about the circumstances under which the deceased met her death, is a strong aspect of the incident which prima

facie connect him with the commission of offence. He also referred to positive FSL report qua crime empty and 30 bore pistol used as weapon of offence in the incident.

4. In response to the arguments of learned counsel for the petitioner question as to whether in absence of any direct evidence, only postmortem report of the deceased negating the initial version of the respondent/accused, coupled with positive FSL report about 30 bore pistol and crime empty, which too, has not been recovered from direct possession of the accused nor on his pointation, rather produced by one Shahid, would be sufficient to connect the petitioner with the commission of offence at this stage, is yet to be plausibly answered by the prosecution during trial. Other material is the presumption against accused because he allegedly was in his office when received information about the incident. Had he been present in the house at the time of incident, then definitely, he had to explain the circumstances of death of his deceased wife. It is a case squarely based on circumstantial evidence, and it is yet to be determined during trial after recording evidence as to whether the pieces of circumstantial evidence makes an unbroken chain to touch its one end the dead body of the deceased and other the neck of the

accused. At the moment, on tentative assessment of the material available on record, in absence of direct evidence, the case of the respondent requires further probe into his guilt, on the basis whereof the learned lower court was justified to extend him the concession of bail.

5. Admittedly, principles governing grant of bail and cancellation of bail, stood substantially on different footings. Once bail has been granted by a competent Court of law, strong and exceptional grounds are required for cancellation thereof and it has to be seen as to whether the bail granting order is patently illegal, erroneous, and factually incorrect and has resulted in miscarriage of justice. Courts are always slow to cancel bail already granted as the liberty of a person cannot be curtailed on flimsy grounds because cancellation of bail is a harsh step as it interfered with the liberty of an individual hence it must not be resorted to lightly and power to take back the accused in custody is to be exercised with care and circumspection. Apart from this, section 497 (5) Cr.P.C. did not command the Court to cancel the bail even when the offence was punishable with death or imprisonment for life and even where the grant of bail is prohibited under Section 497 (1) Cr.P.C. No interference with bail granting

order is required unless the same lacked reasons or is perfunctory in nature. To curtail the liberty of a person on bail, the prosecution should make out a case for cancellation by not making allegations alone but by giving substantive proof of such allegations. Learned counsel for the petitioner failed to point out any such ground to convince this Court for interference in the impugned order.

6. Resultantly, this petition being without any force is hereby dismissed.

**Announced.**  
**04.05.2015**

**J U D G E**



