

PESHAWAR HIGH COURT, MINGORA BENCH/
DAR UL QAZA, SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
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	13.7.2015	<p><u>Cr.M No. 122/2015</u> <u>In Cr.A No. 138-M/2015</u></p> <p>Present: Mr. Sher Muhammad Khan, Advocate for the petitioner/appellant.</p> <p>Mr. Sabir Shah, A.A.G. for the State.</p> <p>***</p> <p><u>HAIDER ALI KHAN, J.-</u> Through the instant Cr.M under section 426, Cr.P.C the petitioner/convict seeks suspension of life sentence awarded to him by the trial Court and his release on bail till final disposal of the main appeal.</p> <p>2. Learned counsel for the petitioner referred to Paragraph 9 of Shari Nizam-e-Adal Regulation, 2009 and contended that under the Islamic law only legal heirs of a deceased are entitled to charge a person for the murder of their predecessor but in the present case neither the deceased then injured Shah Zamin nor his legal heirs have charged the present petitioner/convict for his murder. In this regard the learned counsel also referred to Verse No.35 of Sura Bani-Israiel and further contended</p>

		<p>that “Sultan” mentioned in the verse means a person who is legally authorized to charge or pardon. The learned counsel concluded that in view of the prevailing legal position, the petitioner/convict is entitled to the concession of bail till disposal of his appeal.</p> <p>3. On the other hand, the learned A.A.G. contended that the petitioner/convict has been convicted by a competent Court after proper appraisal of evidence and the present case does not come within the ambit of any of the parameters mentioned in section 426, Cr.P.C, therefore, the present application is liable to be dismissed.</p> <p>4. Arguments heard and available record perused.</p> <p>5. Admittedly, the accused was 15/16 years of age at the time of the commission of the offence who all along remained on bail until conclusion of the trial and he was tried as juvenile offender by the trial Court under the Juvenile Justice System Ordinance. Record shows that two separate FIRs were registered regarding the same occurrence. This Court considers application of the petitioner on the grounds firstly taht one FIR bearing No.49 was lodged by Mst. Gulshan Bibi against the deceased Shah Zamin and his two sons Shakil Ahmad</p>
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		<p>and the present petitioner/convict Muhamamd Arif. Shakil Ahmad absconding co-accused was given the role of effective firing at her husband Muslim Khan whereas the present petitioner/convict Muhammad Arif was given the role of firing at his father Shah Zamin. Secondly, that the second FIR No.50 was registered by the deceased then injured Shah Zamin (father of the petitioner/convict) against Muhammad Salim. A bare reading of FIR No. 50 reveals that the deceased Shah Zamin while lodging the FIR, did not charge the present petitioner/convict for attempting at his life. He later on succumbed to his injuries and died.</p> <p><u>6.</u> Thirdly, the record shows that the main appeal was fixed for 03.7.2015 and notice was issued to the other side for today. Widow, major daughter and father of the deceased Shah Zamin (mother, sister and grandfather of the petitioner) are present before the Court and stated that they never charged the petitioner/convict for the murder of their predecessor rather he was charged by the complainant Mst. Gulshan Bibi in cross FIR No. 49 for firing at his own father. This version stands belied by the the complainant Shah Zamin then injured who did not utter a single word regarding any role of the present petitioner/convict in his FIR No.50. Fourthly, that</p>
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	<p>in this backdrop the learned trial Court passed conviction on the petitioner/convict for life imprisonment under section 302(b) PPC as ‘Tazir’ in disregard of the sharia law as envisaged by Paragraph 9(1) of the Shari Nizam-e-Adl Regulation, 2009, according to which a Qazi is required to seek guidance form Quran, Sunnah and Fiqah for conduct and resolution of cases. For convenience sake the Paragaraph 9(1) of the Regulation ibid is reproduced herein below:-</p> <p><u>“9. Proceedings to be in accordance with Shariah.</u>----(1) A Qazi or Executive Magistrate shall seeks guidance from Quarn Majeed, Sunnah-e-Nabwi (<i>Sallallaho Alaihe Wasallam</i>), Ijam and Qiyas for the purposes of procedure and proceedings for conduct and resolution of cases and shall decide the same in accordance with Shariah. While expounding and interpreting the Quran Majeed, Sunnah-e-Nabwi (<i>Sallaho Aliahe Wassallam</i>) the Qazi and Executive Magistrate shall follow the established principles of exposition and interpretation of Quran Majeed, Sunnah-e-Nabwi (<i>Sallallaho Alaihe Wasallam</i>) and, for this purpose, shall also consider the expositions and opinions of recognized Fuqaha of Islam”.</p> <p>The PLD 1989 Supreme Court (Shariat Appellate Bench) page 633 is also supporting the petitioner’s version regarding the application of Sharia Law in such like cases.</p> <p><u>7.</u> The legal question raised by learned counsel</p>
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for the petitioner/convict needs thorough deliberation. Moreover, the petitioner is a student of F.Sc who attempted one paper from jail, therefore, keeping in view provisions of Paragraph 9 of Shari Nizam-e-Adl Regulation, 2009 as well as the judgment reported as PLD 1989 Supreme Court (Shariat Appellate Bench) page 633, this Cr.M is allowed. The petitioner/convict is directed to be released on bail untill 17.9.2015 provided he furnishes a bail bond for Rs.200,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court, who shall ensure that the sureties are local, reliable and men means. Office is directed to fix the main appeal on the date aforementioned and ensure attendance of all concerned as the case will be positively argued on that date.

Announced
13.7.2015

JUDGE

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