

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. M No. 371-A of 2015

JUDGMENT

Date of hearing.....20.08.2015.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- Muhammad Fayaz and Rafique, accused/petitioners, are seeking post arrest bail in case vide FIR No.40 dated 25.02.2015 under Sections 302/201/109/34 PPC, Police Station Nara, Abbottabad, which was registered on the report of Muhammad Fareed, complainant/respondent No.2, who reported to the police about the 'Qatl-i-Amd' of his son Yasir Mahmood, who was plying his Potohar Jeep on daily basis from his village to Bodla for passengers

commuting between the two places; but could not be contacted on telephone by the complainant till 9.30 P.M on the day of occurrence. According to the FIR, when the complainant had taken passengers in his vehicle to Havelian, he was asked by an unknown person on his cell phone to search for his son near the house of his maternal uncle, whereupon he contacted his near relative Imran and his brother Muhammad Hafiz to search for Yasir Mahmood, who, after some time, informed him about the dead body of Yasir Mahmood lying in Bandiyan. On reaching the spot, he found the local police there on the scene of occurrence and satisfied himself that the accused/petitioners along with co-accused Shoukat Ali, Shiraz and Muhammad Fayaz had committed the '*Qatl-i-Amd*' of his deceased son on the instigation of Mst. Rehana Bibi, wife of Shiraz, for unknown reasons after calling

the deceased from the house of Imran, where he was staying on the direction of the complainant. The complainant alleged that Yasir Mahmood was killed after subjecting him to torture. The report was lodged at 1300 hours on the following day of the occurrence i.e. 25.02.2015 and FIR was registered on the same day at 1530 hours on the basis of Murasila drafted by Muhammad Parvaiz, ASI. In his supplementary statement under section 164 Cr.PC recoded on 09.03.2015, the complainant also charged co-accused Muhammad Salim for abetment and helping the other co-accused in the disposal of the dead body of his deceased son.

2. During investigation, deceased Yasir Mahmood was medically examined and the Medical Officer found the cause of his death 'because of strangling with something like cloth but not rope', and had

'strangled vigorously' and 'head (forehead) struck against something very hard, like rock-edges', leading to death of the deceased because of 'suffocation and head injury'. The co-accused, namely, Shoukat Zaman and Shiraz Khan were arrested on 01.03.2015; while the remaining co-accused, including accused/petitioners, remained at large, therefore, were proceeded against under Sections 204 and 87 Cr.PC. Accused/petitioner Muhammad Fayaz was arrested on 18.03.2015, while accused/petitioner Muhammad Rafique was arrested on 09.04.2015. After completion of investigation, complete challan has been submitted in the case by the police/prosecution on 29.06.2015.

3. Arguments of the learned counsel for the accused/petitioners, the learned AAG assisted by learned counsel for complainant/respondent No.2 heard, and record perused.

4. It may be pointed out, at the outset, that co-accused Shoukat Ali alias Shoukat Zaman had been released on post arrest bail by the learned Additional Sessions Judge-III, Abbottabad, vide order dated 03.04.2015, and petition for cancellation of his bail was dismissed by this Court on 08.06.2015. It may also be added here that co-accused Shoukat Ali alias Shoukat Zaman was charged for exactly the same role which has been attributed to the accused/petitioners.

5. Besides, the occurrence is admittedly unseen and the complainant has not disclosed either his source of information or the basis for his satisfaction about involvement of the accused/petitioners in the commission of the offence, as he charged the accused/petitioners on mere suspicion. Likewise, nothing incriminating has been

recovered from the possession of the accused/petitioners, neither they have made confessional statement despite remaining in police custody. In the circumstances, the so-called pointation of the scene of occurrence, by the accused/petitioners already known to the police, would hardly be a valid reason for refusal of bail to the accused/petitioners, when they are even otherwise entitled to the concession of bail under the rule of consistency.

6. Furthermore, the accused/petitioners are behind the bars after their arrest but no longer required for the purpose of investigation, as investigation in the case is complete and complete challan in the case has been submitted on 29.06.2015.

7. In view of the above, the application is accepted and the accused/petitioners are admitted to post

arrest bail, but subject to furnishing bail bonds in the sum of Rs.100,000/- each with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

Announced.
20.08.2015

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