

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

Cr. M/BCA No.708-P/2020.

JUDGMENT

Date of hearing.....14/06/2021.....

Petitioner's (Mst. Naveeda) By Mr. Munsif Saeed, Advocate.

Respondent (Mehtab respondent No.2) By Mr. Muhammad Sajid Khan,
Advocate.

(State) By Miss. Sophia Noreen, AAG.

S M ATTIQUE SHAH. J:-

This single order shall

dispose of the instant bail cancellation petition i.e BCA No.708-P/2020 and; Criminal Revision No.34-P/2020, both; being so filed by Mst. Naveeda against the bail granting order dated 15.02.2020 passed by the learned Additional Sessions Judge-I, Lahore Swabi, whereby post arrest bail was granted to accused-respondent Mehtab and; the case/trial was adjourned till the arrival and appearance of the complainant for recording his evidence.

2. The brief and essential facts of the prosecution case, as reported in the FIR, is that on 23.02.2013 complainant Mian Qasim Shah charged the accused-respondent Mehtab for committing the murder of his cousin Azam Shah.

Summar

3. Heard. Record perused.

4. Perusal of record reveals that on merit the concession of bail was refused to the accused-respondent Mehtab up to this Court. After the commission of offence, the accused-respondent remained fugitive from law; however, on 22.11.2018 he was arrested in the present case and; after completion of investigation, supplementary challan against him was submitted before the Court. Formal charge against the accused-respondent was framed, to which he did not plead guilty and claimed trial. During the trial, the prosecution examined Mushtaq Hussain ASI (PW-1), who is marginal witness to the pointation memo (EX PW 1/1), recovery memo (EX PW 1/2) vide which the accused produced one 30 bore pistol alongwith fixed charger containing five live rounds of the same bore to the I.O, Dr. Akhtar Ali Shah (PW-2) who conducted autopsy on the dead body of the deceased, Ghani Said Khan Inspector (PW-3) who on the report of complainant registered case FIR (EX PA), Saadi Khan SI (PW-4) who arrested the accused, Shehzad Khan SI (PW-5), Farooq Zaman Inspector (PW-6) who conducted



investigation in the case, Mian Akhtar Munir (PW-7) who is marginal witness to recovery memos and; Asir Shah (PW-8) who identified the dead body of the deceased before the doctor as well as before the police. Out of total 17 prosecution witnesses, eight witnesses have been examined; but, the star witness of the prosecution is the complainant namely Mian Qasim Shah, who was summoned time and again; however, he failed to appear before the Court and; according to the report, he had gone abroad for earning his livelihood and as such there was no hope of his appearance before the Court and; recording his evidence in the near future. Thereafter, non-bailable warrants of arrest were issued against the complainant; but, even then, he could not be produced before the Court and; upon the request of prosecution the case was adjourned so many times. Even the prosecution finally showed it inability to produce the complainant before the Court for recording his statement. It needs to be mentioned that indeed the complainant is the sole eye witness of the occurrence and; therefore, his appearance and recording of his statement is utmost important



for the case of prosecution. Certainly, right from the date of his arrest i.e 22.11.2018 the accused-respondent is behind the bars and; also there is no hope of appearance and recording the statement of the complainant, being the star witness of prosecution, before the Court in the near future. Indeed, an accused person cannot not be kept behind the bars for an indefinite period; particularly, when the trial Court is unable to conclude and decide the fate of the case on account of the absence of the material evidence of the prosecution.

5. In view of above, the learned trial Court had left with no other option; but, to adjourn the case sine die, till the arrival and appearance of the complainant before the Court for recording his evidence and; thus, has rightly granted the concession of bail to accused-respondent Mehtab. Upon the arrival and appearance of the complainant, the case of prosecution could be resurrected on its application for recording his statement and; further proceedings therein. The impugned order of the learned trial Court is the result of proper appreciation of the facts, circumstances and; the law applicable to the case in hand;



which requires no interference by this Court in the present petitions. Hence, the bail cancellation application and Criminal Revision; being devoid of merits are hereby dismissed.

Announced.
Dated.14.06.2021


JUDGE

(S.B of)
Hon'ble Mr. Justice S M Attique Shah.

(K.Ali P.S)