

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 and that of parties or counsel where necessary.
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	26.09.2017	<p><u>Cr.A 184-M/2017</u></p> <p>Present: Mr. Razaullah Khan, Advocate for Appellant/Convict.</p> <p>Mr. Sabir Shah, A.A.G for State.</p> <p>Mr. Rashid Ali Khan, Advocate for Respondent No.2/Complainant.</p> <p>***</p> <p>This being appeal filed against conviction and sentence of life imprisonment, admit. Notice and record.</p> <p><u>Cr.M 218-M/2017</u></p> <p><u>ISHTIAQ IBRAHIM, J.-</u> Through this application under section 426 Cr.P.C, the applicant/appellant namely Haider Ali son of Anwar Ali seeks suspension of the conviction & sentence awarded to him by the learned Additional Sessions Judge/Izafi Zila Qazi, Bahrain, Camp Court at Khwazakhela, District Swat vide judgment dated 08.8.2017 passed in Sessions Case No. 18/7 of 2014 and his release on bail till the disposal of the main Criminal Appeal.</p> <p><u>2.</u> The applicant/appellant being involved in case FIR No.602 dated 11.10.2014 registered under sections 302/109 PPC at Police Station Khurshid Khan Shaheed</p>

		<p>District Swat was formally indicted on 08.12.2014 and ultimately the trial culminated into the conviction of the applicant/appellant and acquittal of the co-accused. On the conviction of the appellant, he was awarded sentences by the learned trial Court in the following terms:</p> <p><i>i) “U/S 302 (b) PPC for the murder of deceased Shujaat Ali Khan, the appellant was convicted and sentenced to rigorous imprisonment for life.</i></p> <p><i>ii) He was further ordered to pay worth Rs.300,000/- (rupees three hundred thousand) to the legal heirs of deceased Shujaat Ali Khan under section 544-A Cr.PC and in default thereof, to suffer 06 months S.I.</i></p> <p><i>However, the benefit of 382-B Cr.P.C was extended to the convict/appellant.”</i></p> <p><u>3.</u> Learned counsel for the complainant in connected Criminal Appeal No. 186-M/2017 & Criminal Revision No.60-M/2017 while learned A.A.G in some other matters, present before the Court were put on notice. Learned counsel for the complainant submitted <i>wakalatnama</i>.</p> <p><u>4.</u> Learned counsel for the applicant/appellant submitted that the appellant is innocent and has falsely been charged in the case; that the impugned judgment dated 08.08.2017 to the extent of conviction of the appellant is wrong, illegal, void ab-initio, arbitrary, capricious, ultra vires, whimsical, unjust, against the golden principles of</p>
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	<p><i>Shariah</i> and against the materials available on the case record, hence, the same is without lawful authority as no reference of believable evidence against the convict has been given in the impugned judgment and is liable to be set aside. Further submitted that the learned trial Court has erred in law while convicting the appellant for the murder of deceased on very flimsy grounds without proper appreciation of the entire evidence on the record. He relied on the judgment of the apex Court rendered in 2016 SCMR 1325 “Soba Khan Vs. The State and another”.</p> <p><u>5.</u> Learned counsel for the complainant and learned Additional Advocate General vehemently opposed the submissions made by the learned counsel for the applicant/appellant by contending that the appellant has already lost his initial presumption of innocence as he has been found guilty by the competent Court; that the grounds agitated before this Court on behalf of the applicant/appellant for suspension of the sentence would amount to the appraisal of evidence and the prosecution evidence could not be evaluated at this juncture as the same would have a negative effect on the case of either party at the time of hearing the main appeal. They relied on 2003 SCMR 911 and 2002 SCMR 1211.</p> <p><u>6.</u> We have heard the valuable arguments</p>
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	<p>advanced by learned counsels for the parties as well as learned Additional Advocate General and tentatively perused the record.</p> <p><u>7.</u> It is pertinent to mention here that the grounds agitated before us would amount to appraisal of evidence which would prejudice the case of either side, so, we would refrain to touch the merits of the case at this pre-mature stage. The submission of learned counsel that the grounds available to the accused under section 497 Cr.P.C can be taken into consideration while the Court is seized of the application under section 426 Cr.P.C is of paramount importance.</p> <p><u>8.</u> Be that as it may, it is true that grounds under section 497 Cr.P.C are to be kept in consideration while dealing with the application under section 426 Cr.P.C for the suspension of sentence but the difference between the application for grant of bail u/s 497 Cr.P.C and suspension of sentence u/s 426 Cr.P.C shall be kept into consideration because at the time of grant of bail u/s 497 Cr.P.C, the prosecution evidence is yet to be recorded by the trial Court, so any findings made by the Court while granting bail under the <i>ibid</i> provision would not be having bearing upon the trial of the case. While exercising powers u/s 426 Cr.P.C, the Courts are supposed to act with utmost care and caution for</p>
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		<p>the reasons that evidence has already been recorded and the accused has been adjudged guilty by the competent Court of law. In such eventuality, any finding in the circumstances of the case beyond the mandate of section 426 Cr.P.C would definitely have direct bearing on the merits of the main appeal. In the present case, the applicant/appellant has already been found guilty by the competent Court of law and the grounds agitated by learned counsel would amount to appraisal of evidence, which is not the mandate of section 426 Cr.P.C. Resultantly, this application, in the circumstances of the case, being devoid of merits, is dismissed.</p> <p><u>Announced</u> 26.09.2017</p> <p>MOHAMMAD IBRAHIM KHAN JUDGE</p> <p>ISHTIAQ IRAHIM JUDGE</p>
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