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Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M No.303-A of 2014

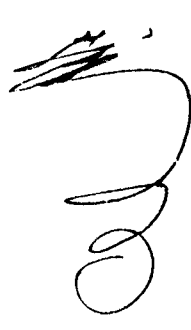
JUDGMENT

Date of hearing.....14/09/2015.....

*Petitioner...(Muhammad Irshad) by M/S Muhammad Nawaz Khan Swati,
Amjad Ali Mughal and Sardar Muhammad Asif,
Advocates.....*

*Respondent (s) ...(The State etc) by M/S Muhammad Naseem Khan Swati
Advocate for accused/respondent and Ayesha Nayab
Gul, Advocate for the State.....*

QALANDAR ALI KHAN, J:- Muhammad



Irshad, petitioner/complainant, is seeking
cancellation of bail granted to accused/
respondent No.2, Shah Nawaz, vide
impugned order dated 24.05.2014, by the
learned Additional Sessions Judge-II,
Mansehra, in case against him under Section
302 PPC vide FIR No.164 registered in Police
Station Shinkiari on 27.05.2003. The

impugned order dated 24.05.2014 would show that the accused/respondent No.2 was released on post arrest bail only on medical ground.

2. In the FIR lodged by the complainant in the police station at 08:30 hours on 27.05.2003, the accused/respondent was the single accused nominated for the *Qatl-i-Amd* of nephew of the complainant, deceased Jabir, by firing at the deceased with his 12 bore shotgun. The motive for the offence was cited as dispute between the deceased and the accused/respondent over some money transaction. The accused/ respondent remained at large and was proceeded against under sections 204 and 87 Cr.P.C, and challan was submitted against him under section 512 Cr.P.C on 07.07.2003, leading to proceedings against him under the aforesaid provisions of law, resulting in his declaration as a proclaimed offender, vide order of the

learned trial Court/Additional Sessions Judge, Mansehra dated 10.05.2007. The accused/respondent was arrested by the local police of Police Station Shahdara, Lahore, on 31.01.2014, and formally arrested in the case on 01.02.2014. After his arrest in the case, a 12 bore shotgun was taken into possession by the I.O as weapon of offence, allegedly, handed over by the accused/respondent to the I.O, which was found in working condition by the Firearms Expert. After completion of investigation, the local police submitted supplementary challan against the accused/respondent on 07.02.2014, whereupon cognizance has been taken by the learned trial Court/Additional Sessions Judge-II, Mansehra, and charge framed against the accused/respondent on 29.02.2014.

3. The accused/respondent, after the trial Court had taken cognizance in the case,

moved application for his release on bail, mainly, on medical ground on 22.03.2014, claiming therein that he was *diabetic* and also suffering from heart disease, which were not curable in jail, lacking treatment facilities. On the application of the accused/respondent, the M.S of AMC, Abbottabad, was directed by the learned trial Court/Additional Sessions Judge-II, Mansehra, vide his order dated 14.04.2014, to constitute medical board comprising a heart specialist and submit report of the medical board; but report of the Standing Medical Board, received in the Court, was found incomplete, therefore, the Medical Board was once again directed to submit a definite report about the disease of the accused, with further direction to mention whether the disease of the accused was dangerous to his life and whether treatment of the accused could be arranged in the jail hospital or otherwise.

4. The fresh report of the Medical Board dated 22.05.2014, which formed basis for the impugned order dated 24.05.2014, was to the following effect:-

"Medical record of Mr. Shah Nawaz was reviewed. Mr. Shah Nawaz recently underwent coronary angiography in Ayub Teaching Hospital, Abbottabad. The findings of Coronary angiography suggest 3 vessel coronary artery disease (3VD) and Mr. Shah Nawaz has been advised CABG (Coronary artery bypass graft) by our cardiologist."



The learned trial Court/Additional Sessions Judge-II, Mansehra, on the basis of the above report, held that the accused/respondent was a serious heart patient and known *diabetic* and had a right of treatment from a doctor/hospital of his own choice. The learned Additional Sessions Judge further held that ailment of the accused/respondent was dangerous to his life.


5. Arguments of learned counsel for the petitioner/complainant, learned State counsel and learned counsel for the accused/respondent heard, and record perused.

6. It may be observed at the very outset that the learned Additional Sessions Judge has dealt with the bail petition in a slipshod and cursory manner as he totally overlooked the other material and relevant aspects of the case such as serious charge of *Qatl-i-Amd* against the accused/respondent and his remaining fugitive from law for more than a decade before his arrest in Lahore on 31.01.2014. Besides, the accused/respondent had also claimed bail on merits while furnishing some explanation for his absconsion in his application for bail dated 21.03.2014.

7. Apart from direct charge for broad day light *Qatl-i-Amd* of the deceased only against

the accused/respondent and his prolonged absconsion, stretching over more than ten years, the accused/respondent also did not qualify for release on bail on medical ground for the simple reason that even in the report of the Standing Medical Board, it was nowhere mentioned that the twin ailments of the accused/respondent, namely, *diabetes* and cardiac problem posed danger to his life, rather the medical board suggested/advised "CABG (Coronary Artery Bypass Graft) by our cardiologist", without any indication that either the treatment facility was not available in ATH, Abbottabad, or the accused/respondent required specialized treatment elsewhere. Needless to say that treatment for *diabetes* is available everywhere, even in jail, and even management of *diabetes* for undertaking the procedure suggested by the Standing Medical Board are available in each and every hospital, let alone ATH, Abbottabad.

Notwithstanding the fact that no record of treatment or any procedure for such a 'serious' heart ailment was available prior to arrest of accused/respondent and his application for post arrest bail, even during the period of his absconsion for more than ten years, the record is also silent about any treatment or CABG by the accused/

 respondent till date after his release on bail on 24.05.2014; and even today the learned counsel for the accused/respondent was unable to show any step on the part of the accused/respondent for treatment of his so-called three vessels coronary artery disease (3 VD).

8. Therefore, the only conclusion which one can draw from the conduct of the accused/ respondent is that the medical ground was coined by him only to get himself released from the jail which, indeed, was facilitated by the Court while taking no pain to

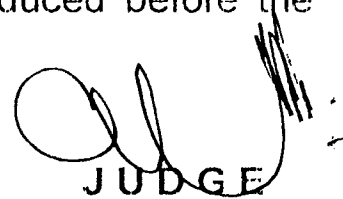
also take into consideration the other attending circumstances of the case, disentitling the accused/respondent to the concession of bail. In short, the impugned order is arbitrary, perverse and capricious, calling for interference by this Court. (2010 SCMR 576, 2010 SCMR 605, 1998 P.Cr.L.J 763, 2010 P.Cr.L.J 921 and 2014 P.Cr.L.J 1526).

9. It may, however, be observed that trial in the case has commenced, therefore, the learned trial Court is expected to strive for early conclusion of the trial; and at the same time, the jail authorities are directed to make arrangements, whenever required, for treatment/medical facilities to the accused/respondent in the jail as well as in ATH, Abbottabad, where the requisite medical/treatment facilities for the heart ailment of the accused/respondent are

available, according to the report of the Standing Medical Board.

10. Consequently, the application is accepted and by setting aside the impugned order dated 24.05.2014, the post arrest bail granted to accused/ respondent is hereby cancelled/recalled. Accused/respondent be taken into custody and produced before the trial Court.

Announced.
Dt.14.09.2015


JUDGE

/'M.S.Awan'/

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M No.303-A of 2014

JUDGMENT

Date of hearing.....14/09/2015.....

Petitioner...(Muhammad Irshad) by M/S Muhammad Nawaz Khan Swati,
Amjad Ali Mughal and Sardar Muhammad Asif,
Advocates.....

Respondent (s) ...(The State etc) by M/S Muhammad Naseem Khan Swati
and Ayesha Nayab Gul, Advocates.....

QALANDAR ALI KHAN, J:- Vide detailed order of today, recorded separately, on the acceptance of the petition, the bail granted to accused/respondent No.2 is cancelled and order of the learned Additional Sessions Judge-II Mansehra dated 24.05.2014 is recalled, with the result, accused/respondent No.2 be taken into custody and produced before the concerned Court.

Announced.
Dt.14.09.2015


JUDGE

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BEFORE THE HONORABLE PESHAWAR HIGH COURT,
ABBOTABAD BENCH

Criminal Misc No 303-AC/2014

Muhammad Irshad son of Ajoon Khan resident of Kerry Hall

Domail police station Shinkari district Mansehra.

...PETITIONER

VERS

1. The STATE

2. Shah Nawaz son of Hayyat caste Sawati resident of
Suchaan Kalaan district Mansehra.

....RESPONDENTS

FIR No: 164/2003 dated 27-05-2003

Offence: U/S 302 PPC

Police Station : Shinkari

District Mansehra

**PETITION UNDER SECTION 497(5) CR.P.C FOR THE
CANCELLATION OF BAIL GRANTED TO THE
RESPONDENT NO.2 BY THE LEARNED SESSIONS
JUDGE MANSERA IN MURDER CASE VIDE HIS
ORDER DATED 24-05-2014**

RESPECTFULLY SHEWETH:

1. That the brief facts giving rise to the instant petition are that on 27-05-2003 at 8.30 brought the dead body of his deceased nephew Jaabir on a bed to the police station and made a report to the effect that the deceased Jaabir is his real maternal Nephew. He spent the night at his house situated in village Domail. He and Jaabir deceased were going back to the house of deceased Jaabir, situated village Kary. At 6.45, a.m. when they reached Nawaz Abad Bazar, the accused Shahnawaz



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