

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Cr.Misc. BA No. 1473-P/2017.

Jawad Khan...vs...The State.

JUDGMENT

Date of hearing.....24.7.2017.....

Petitioner(s) by M/S Abdul Fayaz, Hussain Ali and Sahibzada Riazat Ul Haq, Advocates.

State by Mian Arshad Jan, AAG.

Complainant by Mian Mohib Ullah Kakakhel & Mian Saif Ullah Mohib, Advocates.

MUHAMMAD AYUB KHAN J:- Jawad Khan son of

Sabz Ali Khan, petitioner herein, seeks bail in case FIR No.

99 dated 01.4.2017 registered under section 302-201-202-

109-34 PPC/ 512 Cr.PC at P.S Khanmai, District

Charsadda.

2. On 31.3.2017, vide Mad No. 35 Noor Azam Khan reported about the missing of his son namely, Aks Noor. According to him Aks Noor (his son) was residing with him at Peshawar, who left the house at 9.00 am in his car. He tried to contact him on his cell phone No. 0340-0063090, but he could not get response. At 1400 hours he was informed that the car of his son was parked near Wapda Colony. He was not sure if his son had been kidnapped.

3. On 1.4.2017, Bahadar Khan S.I was informed about the presence of a dead body in a canal. Nobody could identify the dead body. The un-identified dead body was sent to DHQ, Charsadda for Postmortem. As per report of SI Bahadar Khan, FIR No. 99 dated 1.4.2017 under section 302-201-202-109-34 PPC was registered at P.S Khanmai, Charsadda against unknown persons, showing the time of occurrence as unknown as well.

4. The record shows that the dead body was buried in the graveyard of Charsadda. On exhumation, on 2.4.2017 the dead body was identified by Noor Azam Khan and was handed over to him. It is mentioned that the process was completed without order of any Court.

5. On 30.4.2017, statement of Noor Azam was recorded under section 164 Cr.PC. he charged the accused-petitioner, his father and sister for the commission of the offence. According to him, the sister of accused had friendly relations with the deceased so he was done to death.

6. Arguments heard and record perused.

7. Admittedly, there is no eye witness to the occurrence. The cell phones of deceased and sister of the accused-petitioner have not been taken into possession, so as to ascertain any relation amongst them. As for as the relationship (if any) through the Facebook is concerned, the

same requires evidence. Besides the above, the assertion that the deceased went missing on 31.3.2017 has not been supported by the Postmortem report as in the PM report dated 1.4.2017, probable time between death and postmortem has been given approximately to be 3 to 4 days. If it is believed that the deceased was done to death 3 to 4 days prior to 31.3.2017, then the missing date would be 27/28.3.2017. Another piece of circumstantial evidence is the recovery of the alleged belongings of the deceased at the pointation of the accused-petitioner, but the nature of recovered articles is so, that its plantation cannot be ruled out at this stage. It is case of circumstantial evidence and requires further probe into the guilt of the accused-petitioner. At present, the case of petitioner is open to further inquiry, entitling him to the concession of bail. **2017 SCMR 728** may be relied in this regard.

8. For the reasons given herein above, the instant Cr.Misc. BA No. 1473-P/2017 is accepted and the accused-petitioner is allowed bail provided he furnishes bail bonds in the sum of Rs. 200,000/- (Rupees Two Lac) with two local, reliable and men of means sureties, each in the like amount to the satisfaction of Ilaqa Judicial Magistrate/ MOD.

9. The observations given by this court while deciding bail applications, are not to be considered during

the trial of the accused, which are tentative in nature and shall not, in any manner, influence the trial Court, which is free to apprise the evidence strictly in accordance with the law and merits of the case.

Announced on;
24th of July, 2017
Zarshad



JUDGE

Office
26/7.