

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1431 OF 2019

(Against the order of the Lahore High Court, Rawalpindi Bench, Rawalpindi dated 11.11.2019 passed in Crl. Misc. No.1780-B/2019)

Noor Muhammad ... **Petitioner**

Versus

The State and another ... **Respondents**

For the Petitioner : Malik Waheed Anjum, ASC
Syed Rifaqat Hussain Shah AOR

For the Complainant Altaf Elahi Sheikh, ASC
Mehmood A. Sheikh, AOR

For the State : Mirza M. Usman DPG, Punjab
Khalid Ahmad SDPO
Tariq Mehmood SHO

Date of Hearing : 07.05.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Petitioner

has assailed the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 challenging the order of the learned Lahore High Court, Rawalpindi Bench Rawalpindi dated 11.11.2019 with the prayer to grant leave against the order and to release the petitioner on bail in the interest of justice.

2. The petitioner alongwith others was involved in case bearing FIR No.123/2017 dated 25.04.2017, under Section 302,

324, 34 PPC, registered with police station Talagang, District Chakwal

As per allegation contained in the crime report, it is alleged that the petitioner alongwith his co-accused while armed with hatchet inflicted blow on the head of father of complainant, who succumbed to the injuries. The petitioner applied for post arrest bail before the learned trial court which was dismissed vide order dated 03.10.2019. The order of learned Additional Sessions Judge, Talagang was assailed before learned Lahore High Court Rawalpindi Bench, Rawalpindi through Criminal Miscellaneous No.1780-B/2019 which was decided vide order dated 11.11.2019 while resulting into dismissal of bail application. Hence, the instant petition.

3. At the very outset, it has been argued by the learned counsel for the petitioner that the local police investigated the matter in detail and ultimately found the involvement of the petitioner suspicious, hence, his arrest was deferred under section 169 Cr.P.C. The second investigation was carried out by RIB, Rawalpindi. During the investigation, the participation of the petitioner was also found doubtful and as such the investigating officer has not given a definite opinion qua culpability of the petitioner in the said matter. Contends that third investigation was also carried out by Crime Branch Punjab, however, the petitioner was found involved on the basis of special oath offered in the mosque which is against the spirit of Article 163 of Qanun-e-Shahadat Order, 1984. Further contends that the sole eye witness mentioned in the FIR got recorded his statement thrice under section 161 Cr.P.C. In all three successive statements, he has contradicted his earlier statement,

hence it loses its credibility as a witness and reduces its value of the statement to nil. The investigating officer recorded the statement of daughter and daughter-in-law of the deceased at a belated stage to strengthen the prosecution case which negates its authenticity. Contends that in the given facts and circumstances, the case of the petitioner is fully covered under section 497(2) Cr.P.C entitling him for concession of bail.

4. *On the other hand, learned Law Officer assisted by learned counsel for the complainant has stated that the petitioner is nominated in the crime report with the allegation of inflicting hatchet blow on the head of the deceased, however frankly conceded that the statements of the PWs was recorded on 31.12.2018. Finally, the learned law officer has stated that recovery of hatchet has been affected from the petitioner, hence, he is not entitled for grant of bail.*

5. *We have heard the learned counsel for the parties and gone through the record.*

There is no denial to this fact that local police deferred the arrest of the petitioner during the course of investigation in terms of section 169 Cr.P.C. The prosecution being aggrieved applied for transfer of investigation which was entrusted to RIB, Rawalpindi. During the course of investigation carried out by Senior Police Officer, though the investigation was conducted in detail but no definite finding was given regarding the participation of petitioner in the instant case. The investigation in this case was further entrusted to Crime Branch Punjab when the petitioner was found involved in this case on the basis of special oath. It is established principle of law that concept of special oath is in defiance of Article 163 of Qanun-e-Shahadat Order 1984. The same is reproduced as under:-

163. Acceptance or denial of claim on oath:

- (1)
- (2)
- (3) *Nothing in this Article applies to laws relating to the enforcement of Hudood or other criminal cases*

We have also noticed from the record that Khawaja Din Muhammad (PW) has made three successive statements before investigating officers. In all three statements, he has taken somersault while negating each statement whereas last statement was made at a belated stage. The third statement made by said witness before DSP, Investigating Branch was recorded on 10.12.2018 with the delay of one and half year. Similarly, Mst. Amina Bibi and Mst. Imtiaz Fatima introduced eye witnesses of the occurrence also made their statements under section 161 Cr.P.C on 31.12.2018 with the delay of more than one and half year. It is established principle of law that delayed recording of statement of the PW under section 161 Cr.P.C. reduces its value to nil. Reliance in this regard is placed upon case titled as "ABDUL KHALIQ versus THE STATE" (1996 SCMR 1553) wherein it has been held as under:-

"---S. 161---Penal Code (XLV of 1860), S. 302/34---Late recording of statement under S. 161, Cr.P.C. ---Value---Late recording of a statement of a prosecution witness under S. 161, Cr.P.C. reduces its value to nil unless delay is plausibly explained".

The contention of the learned counsel for the complainant that recovery has been affected after lapse of more than two years, the value of the same would be resolved by the learned trial court after recording of evidence. It has been stated before us that trial has commenced and two witnesses have already been recorded. We have taken this aspect into consideration and found that if the case of the petitioner comes within the ambit of "further inquiry" under

section 497(2) Cr.P.C. he cannot be kept behind the bar even for a moment. Otherwise, liberty of a person is a precious right which has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973.

6. As a consequence of the facts and circumstances surfaced on the record, we are persuaded to grant leave in this case. As such, Criminal Petition is converted into appeal, same is allowed; the petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court/Duty Judge.

7. Before parting with the order, it has been made clear that the observations made hereinabove are tentative in nature and it has no bearing during the course of proceedings before the learned trial court.

Judge

Judge

Islamabad,
07.05.2020
Approved for reporting
Athar