

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar  
Justice Salahuddin Panhwar  
Justice Ishtiaq Ibrahim

**Jail Petition No. 438/2018**

(On appeal against the order dated 14.06.2011  
passed by the Peshawar High Court, Peshawar in  
Crl. A. No. 825/2010 and M. R. No. 31/2010)

Imtiaz  
Naeem

Petitioner(s)

Versus

The State

Respondent(s)

For the Petitioner(s): Mr. Arshad Hussain Yousafzai, ASC

For the State: Mr. Kausar Ali Shah, Addl. AG

For the Complainant: Nemo

Date of Hearing: 25.02.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** This jail petition is barred by 2511 days. Criminal Miscellaneous Application No.1090/2018 has been filed seeking condonation of delay in filing the petition. The reasons mentioned therein are found by us to be valid and sufficient for the purpose, therefore, the said application is allowed and the delay in filing of jail petition is condoned.

2. The petitioners, Imtiaz and Naeem, had allegedly abducted one Inam Ullah aged about 4/5 years on 05.01.2008 for the purpose of extracting ransom and later on done him to death. For commission of the said offence they were booked in case FIR No. 101, registered at Police Station Sardheri, District Charsada on 28.02.2008 for an offence under section 302 PPC. After a regular trial, they were convicted and sentenced to death for the offences under section 7(a) and (e) of the Anti-Terrorism Act, 1997. The petitioners challenged their convictions and sentences before the High Court through an appeal which was partly allowed and their sentences of death were reduced by the High Court to

imprisonment for life, however, the benefit of section 382-B Cr.P.C. was denied to them. Hence, the present petition for leave to appeal.

3. Admittedly, the alleged murder had remained unwitnessed and at some subsequent stage the petitioner, namely, Imtiaz, had been implicated as an accused person purely on the basis of suspicion. The claim of the complainant in respect of recognizing the voice of the petitioner during a ransom demand made over the telephone, particularly in high stakes scenarios, is fraught with significant risks of error, bias and misinterpretation; secondly, unlike fingerprints or DNA evidence, voice recognition lacks a standardized scientific framework for verification; thirdly, telephone calls, especially those made under duress, may suffer from poor audio quality, background noise or distortions, making it difficult to accurately identify the speaker; and, fourthly, in the absence of additional corroborative evidence (e.g., call records, witness testimony, or forensic analysis), relying solely on voice recognition is inherently unreliable. The irreversible nature of the death penalty or life imprisonment necessitates that evidence be unequivocal and incontrovertible. Any doubt, no matter how small, must weigh in favour of the accused because convicting an individual based on unreliable evidence violates the principle of due process and fair trial, which are fundamental to justice. In such cases courts have frequently required expert testimony or forensic analysis to validate the identification and without such validation the evidence is deemed insufficient.

4. Besides the ocular account furnished by the complainant, the courts below have also based the convictions of petitioners on the alleged judicial confession made by petitioner, Naeem, during the course of investigation. It would be relevant to mention that on 01.03.2008 the complainant recorded his supplementary statement before the police and also before the local magistrate where he charged the petitioner, Imtiaz, for kidnapping the minor for ransom. At the relevant time, the said petitioner was in jail in some other criminal case and as per prosecution, during interrogation, he pointed out the spot where the dead body of the child was buried. He did not make confession before the magistrate, however, during the course of interrogation he disclosed the name of his accomplice as Naeem, who too was in jail. In cases involving capital punishment, the reliability and admissibility of evidence are of

paramount importance. A retracted confession, especially when it stands as the sole basis for conviction, raises significant legal, ethical and practical concerns. When coupled with the dismissal of oral evidence furnished by the complainant, relying on a retracted confession to secure a conviction becomes even more precarious. The record depicts that the place from where the dead body was recovered was already in the knowledge of investigating agency and due to the decomposition of the dead body, there is no medical evidence to corroborate the said confessional statement of petitioner Naeem. There is no evidence of recovery and discovery, legally incriminating in nature to connect the necks of the petitioners with the crime in question, as such, such a confession in the peculiar circumstances of the case could not be made basis for conviction and that too on a capital charge entitling death penalty.

5. For what has been discussed above, we have found that the prosecution had failed to prove its case against the petitioners beyond reasonable doubt. Therefore, whilst setting aside the convictions and sentences of the petitioners, instant petition is converted into an appeal and is allowed. They are acquitted of the charges levelled against them. Since they are reportedly in custody, they should be released forthwith, if not required in any other case.

Judge

Judge

Judge

ISLAMABAD  
25.02.2025  
(Farrukh)

Approved for Reporting