

22/22

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

CRIMINAL PETITION NO.601-L OF 2021

(Against the order dated 15.07.2020 of the
Lahore High Court, Lahore passed in
Criminal Misc. No.27091-B/2020)

Zafar Iqbal

...Petitioner(s)

Versus

The State through Prosecutor General Punjab and another

...Respondent(s)

For the Petitioner: Mr. Akhtar Nawaz Raja, ASC

For the State: Mr. Muhammad Jaffar, Addl.P.G.

For the Complainant: Mr. Sarfraz Khan Gondal, ASC

Date of Hearing: 18.11.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- This petition is barred by 248 days. In normal circumstances the reasons assigned in the application for condonation of delay are not taken into consideration, but keeping in view the facts and circumstance of this particular case, we, in the interest of safe administration of criminal justice, condone the delay of 248 days in filing the petition.

2. Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 15.07.2020 passed by the learned Single Judge of the Lahore High Court, Lahore with a prayer to grant post-arrest bail in case registered vide FIR No.188 dated 08.07.2019 under Sections 302/34/147/109 PPC at Police Station Mela, District Sargodha in the interest of safe administration of criminal justice.

3. As per the contents of the crime report, the allegation against the petitioner is that he along with co-accused inflicted sota blows on the person of Azhar Iqbal deceased whereas the specific allegation against the petitioner is that he gave sota blow which landed on the left eye of deceased which was contributory in nature which was result of his death.

4. At the very outset it has been contended by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the allegation against the petitioner that he caused injury to the deceased is not substantiated from any material which could be made basis for declining prayer of the petitioner. Contends that the occurrence has taken place at the odd hours of the night and the presence of the prosecution witnesses at that particular time does not appeal to reason. Contends that during the course of investigation, it transpired that the deceased had entered into the house of the petitioner with the intent to commit rape with the young daughter of the petitioner aged about 15/16 years. Contends that though the petitioner is found guilty during the course of investigation but at the same time trespassing the house of a law abiding citizen warrants reactionary response which ultimately proved fatal. Contends that according to the medical report, the cause of death is pulmonic failure and as such the petitioner is entitled for the concession of bail as the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C.

5. On the other hand, it has been contended by the learned Law Officer, assisted by the learned counsel for complainant, that the petitioner is nominated in the crime report. He is specifically ascribed injury No.1 which proved fatal towards the death. Contends that six prosecution witnesses have been recorded and as such the petitioner is not entitled for the concession of bail. Learned Law Officer frankly conceded that during the course of investigation, the finding of the Investigating Officer is that the deceased has entered into the house of the petitioner in the midnight

with intent to commit rape with the daughter of the petitioner which act was ultimately retaliated causing death of the deceased.

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

It is salutary principle of law that each criminal case has its own facts and circumstances and has to be decided according to the peculiar facts surfaced on the record. There is no denial to this fact that according to the contents of the crime report, the petitioner is stated to be armed with sota who gave injury on the vital part of the body of the deceased which was seen by the prosecution witnesses. The said injury was subsequently found contributory, however, during the course of investigation, the contents of the crime report were found contradicted and entirely different story was surfaced on the record. The Investigating Officer gave a definite finding of fact that the deceased Azhar Iqbal had illicit intimacy with the daughter of the petitioner and he on that occasion with an intent to fulfill his lust trespassed into the house of the petitioner, where he was overseen by the male members of the family resulting into torture which proved fatal. There are certain very specific reasons to entertain the petition in hand. It is difficult to digest that the prosecution witnesses, mentioned in the crime report, were actually present over there at the odd hours of the night to observe the occurrence as given in the crime report. Further whether at that odd hour of the night, the attempt of the deceased to trespass in the house was bona fide at his part which ultimately resulted into his death. All these queries when juxtaposed with the liberty of a person who was forced to indulge into the crime, if any, the latter is more precious as per the dictates of justice. Otherwise in suchlike cases, the analogy can be drawn from the statutory law prevalent in United Kingdom called "Homicide Act, 1957" wherein if a crime is committed due to mental or psychological compulsion, it squarely falls within the ambit of diminished liability. It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party

to an alleged criminal act, which is committed under the impulses of question of ghairat, the doctrine of diminished liability would be squarely attracted providing mitigation/defence to avail the same in suchlike cases, otherwise in ordinary circumstances the commencement of trial itself is a sufficient ground to decline the prayer of the petitioner, but in the instant case there are sufficient grounds to believe that it is a case of further inquiry entitling for the concession of bail wherein Section 497(4) Cr.P.C. can be pressed into to do complete justice which is attire of this Court.

7. For what has been discussed above, this petition is converted into appeal, allowed and the impugned order is set aside. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

Lahore, the
18th of November, 2021
Approved for reporting
Waqas Naseer/ *