

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 1603-L OF 2021

(On appeal against the order dated 09.11.2021 passed by the Lahore High Court, Lahore in Criminal Appeal No. 7301/2021)

Muhammad Arshad

... Petitioner

Versus

The State and Babar Abbas

...Respondent(s)

For the Petitioner: Mr. Mushtaq Ahmed Mohal, ASC
(through video link from Lahore)

For the State: Mirza Muhammad Usman, DPG

For the Respondent (2): Mrs. Nighat Saeed Mughal, ASC a/w Babar
Abbas (via video link from Lahore)

Date of Hearing: 13.04.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 09.11.2021 passed by the learned Single Judge of the Lahore High Court, Lahore, whereby the application for suspension of sentence filed by the respondent was allowed and he was granted bail.

2. Briefly stated the facts of the matter are that the respondent Babar Abbas along with two co-accused was tried by the learned Trial Court pursuant to a case registered vide FIR No. 529/2019 dated 07.09.2019 under Sections 302/148/149 PPC at Police Station Cantt, Gujranwala for committing murder of Munawar Hussain, brother of the complainant. The learned Trial Court vide its judgment dated 22.12.2020 while acquitting the co-accused,

convicted the respondent under Section 302(b) PPC and sentenced him to imprisonment for life along with payment of compensation of Rs.500,000/- payable to the legal heirs of the deceased or in default whereof to further undergo six months SI. Against the said judgment, the respondent filed Criminal Appeal No. 7301/2021 before the learned Lahore High Court. However, during the pendency of the said appeal, he filed Criminal Misc. No. 01/2021 under Section 426 Cr.P.C. seeking suspension of his sentence, which has been allowed vide impugned order. Hence, this petition filed by the petitioner/complainant seeking leave to appeal.

3. At the very outset, it has been argued by learned counsel for the petitioner that the impugned order amounts to deeper appreciation of the merits of the case, which is not permissible at the time of hearing an application for suspension of sentence. Contends that the respondent was found guilty by the learned Trial Court after recording of evidence and mere a minor contradiction in the statement of the eye-witnesses does not absolve him of his criminal liability. Contends that the respondent had actively participated in the occurrence, therefore, he cannot be enlarged on bail. Lastly contends that the impugned order is the result of misreading and non-reading of evidence and is not sustainable in the eyes of law.

4. On the other hand, learned counsel for the respondent No. 2 while defending the impugned order contended that there are major contradictions in the statements of the prosecution witnesses and medical evidence, which have rightly been taken note of by the learned High Court while handing down the impugned order. Contends that though deeper appreciation is not permissible while suspending the sentence, however, in the interest of justice where the case is wide open then it is incumbent upon the court to decide the *lis* on the basis of material available on the record. Contends that the case of prosecution is advanced by Waqas Ali (PW-8) and Muhammad Arshad, complainant (PW-9) and they have made improvements in their statements, which is clear cut deviation from the original stance and as such the benefit of the same can be extended in favour of the respondent. Contends that there was specific allegation of causing firearm injuries by the three assailants but as per the medical record the deceased sustained only

one injury and that has been made basis by the learned High Court while suspending the sentence and the same is in accordance with the dictates of justice.

5. We have heard learned counsel for the parties at some length and have perused the record with their able assistance.

The learned High Court while suspending the sentence inflicted upon the respondent No. 2 by the learned Trial Court mainly observed that according to the crime report, the respondent along with two co-accused while each armed with 30 bore pistol had made three separate fire shots upon the person of the deceased, which landed on his belly but the assertion of the prosecution witnesses is contradicted by Dr. Azhar Ali Khan (PW-7), according to whom, the deceased sustained only one injury on his belly. During course of trial while appearing as PW-8 and PW-9, both the prosecution witnesses namely Waqas Ali and complainant Muhammad Arshad had improved their earlier stance and stated that it was only the respondent whose fire landed on the belly of the deceased. The possibility cannot be ruled out that the prosecution witnesses deviated on the advice of the counsel or otherwise, therefore, the same cannot be made basis to keep a person behind the bars for indefinite period especially when the Investigating Officer has candidly stated that the empties recovered from the place of occurrence had not been fired by the pistol allegedly recovered at the instance of the respondent. It is now established beyond any doubt that benefit of doubt can be extended even at preliminary stage i.e. bail & suspension of sentence. The learned High Court while suspending the sentence had taken note of this fact coupled with the fact that there is previous enmity between the parties as earlier the deceased was involved by the respondent in a case bearing FIR No. 469/2019 under Sections 324/148/149 PPC. Even otherwise, while drawing analogy with the well settled law that the principles for grant of bail and cancellation whereof are entirely on different footing, the case of the petitioner can be adjudged within the parameters enunciated by this Court from time to time. All these facts and circumstances when evaluated conjointly, compel this Court to come to the conclusion that the learned High Court while suspending the

sentence had taken care of justiciable facts and circumstances and no exception can be taken contrary to what has been observed by the High Court in the order impugned before us. As a consequence, this petition having no merit is accordingly dismissed and leave to appeal is refused.

Islamabad, the
13th of April, 2022
Approved For Reporting
Khurram