

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO.577 OF 2021**

(Against the order dated 20.04.2021 of the  
Lahore High Court, Rawalpindi Bench,  
Rawalpindi passed in CrI.M.No.555-  
B/2021)

Mst. Lubna Bibi

...Petitioner(s)

**VERSUS**

Azhar Javed Abbasi and another

...Respondent(s)

For the Petitioner(s): Syeda Hifza Bukhari, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State: Mirza M. Usman, Addl.P.G.

Date of Hearing: 11.11.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks cancellation of bail granted to the respondent in case FIR No.702/20 dated 10.12.2020 under Sections 337A(ii)/337A(iv)/147/149 PPC registered at Police Station Murree, District Rawalpindi by the Lahore High Court, Rawalpindi Bench, Rawalpindi in the interest of safe administration of criminal justice.

2. As per the crime report, it is alleged that on 03.12.2020 at about 08:30 a.m. the respondent along with co-accused assaulted the complainant party and caused injuries to Mst. Nazash Bibi, Asim, Mst. Talat Bibi and Mst. Lubna Bibi (petitioner). The role attributed to the petitioner is that he inflicted knuckle duster blow on the nose of Asim injured PW.

3. At the very outset, it is contended by the learned counsel for the petitioner that the order passed by the learned Single Bench of the High Court is not sustainable in the eyes of law. Contends that the respondent is ascribed the role of causing injury which falls within the ambit of Section 337A(vi) PPC which falls within the prohibitory clause and as such the bail granting order is devoid of any legal sanctity. Further contends that the respondent has been extended extra-ordinary relief which is not made out from the material on record and as such the order passed by the High Court is based upon artificial findings, which are perverse and fanciful. Lastly contends that the report of the doctor who examined the injury at the first instance has to be given preference over any other opinion. In this regard, he placed reliance on the judgment reported as Muhammad Ejaz Vs. The State and another (2021 SCMR 387).

4. We have heard the learned counsel for the petitioner and perused the record with her assistance.

Primarily the concern of the learned counsel for the petitioner is that the respondent has been extended the premium of pre-arrest bail which is a rare commodity and it has to be extended sparingly. Perusal of the record reveals that the injury ascribed to the respondent falls within the purview of Section 337A(iv) PPC which entails punishment upto 10 years, as such it falls within the prohibitory clause of Section 497 Cr.P.C. The doctor who examined the injured PW found that there was no possibility of any fabrication depending upon the report of the Radiologist. However, Medical Board was constituted vide No.473/DSMB/Y.No.09/2020/DHQ Hospital, Rawalpindi dated 01.02.2021. The said Medical Board was constituted in pursuance of a notification issued by the Government of Punjab bearing No.SO(H&D)6-1/90 dated 12.02.1990. The said notification was circulated to all District Magistrates in the Province. In continuation of the above said notification, another notification was issued bearing No.SO(H&D)5-5/2002 was also issued. According to the said notification, a "Three Tier Structure" for the conduction of medico legal work has been established, which reads as under:-

**"a) FIRST TIER**

The initial medico legal examination shall be carried out by the Medical Officers/Women Medical Officers at the Rural Health Centres, Tehsil Headquarters Hospitals, District Headquarters Hospitals and at Teaching Hospitals.

**b) SECOND TIER**

The District Standing Medical Boards, comprising the following, shall act as first appellate authority in all the 34 districts of Punjab:

Medical Superintendent, DHQ Hospital	Chairman
District Officer Health	Member
Surgeon	Member

These Boards will conduct re-examination if the decision of the first medico legal examiner is challenged and also for examination of alleged cases of Police torture. For District Lahore District Standing Medical Board will be established at Government Mian Muhammad Munshi, DHQ Hospital-I.

**c) THIRD TIER**

The role of Surgeon Medico legal, the Punjab shall only be Appellate and Supervisory. He shall be the Chairman of Provincial Standing Medical Board, which shall be the final appellate authority against the decisions of District Standing Medical Boards. Other Members of the Provincial Standing Medical Board (PSMB) will be the Associate/Assistant Professor Forensic Medicine of the Regional Medical College and the Medical Superintendent of one of the attached Teaching Hospital. The Board can co-opt any other member when required."

The hierarchy of the medical examination as notified by the Health Department clearly reflects that against the opinion of the initial medical officer, the Medical Board will be constituted. Prior to the constitution of the said Medical Board, a judicial order has to be passed by the magisterial Court. According to the Medical Board, as mentioned above, the injured PW was re-examined by four doctors including Medical Superintendent, fully equipped with knowledge and expertise and also better in experience than the earlier expert who examined the injured PW soon after the occurrence. The argument of the learned counsel by relying upon the judgment Muhammad Ejaz Vs. The State and another (2021 SCMR 387) that preference has to be given to the earlier examination because of the reason that medical officer being the first expert to examine the injury, his finding has to be preferred over the Medical Board. We respectfully differ with the finding because of the reason that the expert's opinion depends upon so many factors including, physical examination, qualification, experience and finally collective

wisdom of the members of the Board. In a similar situation, in the judgment reported as Hussain Vs. The State (1968 P Cr. L J 167) this Court laid down the following law:-

*"The High Court has preferred the evidence of Dr. Aftab Ahmad in view of his higher qualifications, particularly, since he too had examined the wounds through a magnifying glass and did not find the two injuries, with which we are now concerned, to be either clean cut or sharp-edged injuries. The possibility of an error being made by the doctor of the Rural Dispensary as to the nature of the injuries cannot be ruled out, for, it is no unlikely for an injury caused by a blunt weapon on a bony prominence to appear as a clean cut wound to an inexperienced person who has not acquired sufficient skill in carrying out postmortem examination. In the circumstances, we are unable to accept the contention of the learned counsel that the opinion of the doctor at the Rural Dispensary was wrongly not preferred over that of the doctor who performed the post-mortem examination by the High Court. The post-mortem, it is true, was held on the 25th September 1964, at 7 a. m. but this was not such a long period after as to completely alter the nature of the injury and transform an incised wound into a contused wound."*

Otherwise, logically speaking, if the argument of the learned counsel that the opinion of the first medical officer has to be given precedence over the other, it does not appeal to reason because the hierarchy of the system will fall to ground. It is not out of context to express that hierarchy of judicial system starts from the court of first instance upto the Supreme Court. The findings of the highest court has to prevail over the others, and even are binding under Article 189 of the Constitution. If the finding of the hierarchy of first instance is to be given precedence, that would frustrate the whole system. We have minutely observed the report of the Medical Board which is available at page (17) of the paper-book. In the report of the Medical Board, which comprised of four senior doctors having superior qualification and experience, it has been observed that "after having gone through examination the Board is of unanimous opinion that regarding injury No.1, the possibility of fabrication cannot be ruled out". It is established law that when there is conflict

in opinions of the medical experts, the expert having better qualification, insight, experience, and more particularly the joint consensus of the members richly equipped has more weightage, hence it has to be given precedence over the first examination conducted by a junior doctor, especially when members of Board while examining in the Board are four in number, whereas the first doctor who examined the injury at the first instance was only a single member assigned the duty to examine the injured person.

5. For what has been discussed above, we do not find any merit in this petition which is accordingly dismissed and leave is refused.

**Islamabad, the**

11<sup>th</sup> November, 2021

Approved for reporting

Waqas Naseer/ \*