

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Yahya Afridi

Criminal Petition No. 1443 of 2021

(Against the order dated 18.11.2021 of the Lahore High Court, Lahore passed in Crl. Misc. No.48041-B/2021)

Muhammad Naeem Hassan.

... Petitioner

Versus

The State through P.G., Punjab and another.

... Respondents

For the Petitioners:

Mr. Mushtaq Ahmad Mohal, ASC.

(Through video-link from Lahore)

Ch. Akhtar Ali, AOR.

For the State:

Mr. Muhammad Jaffar,

Additional Prosecutor General, Punjab.

Ahmed Sher, SI/IO.

Complainant/Respondent No. 2: Ahmed, In-person.

Date of Hearing:

01.02.2022.

ORDER

Qazi Faez Isa, J. Through this petition the petitioner seeks post-arrest bail in case arising out of the FIR No. 78/21 dated 23 February 2021 under sections 302 and 34 of the Pakistan Penal Code registered at Police Station, Laxian, District Sargodha.

2. The learned counsel for the petitioner submits the following grounds to seek bail for the petitioner:

- i) Neither the petitioner nor his alleged co-accused, namely, Mukhtar and Shehzad, were nominated by the complainant, the father of the deceased, in the FIR;
- ii) The petitioner and the said co-accused were nominated later through a supplementary statement of the complainant which was recorded by Ahmed Sher, Sub-Inspector, who is also the Investigating Officer ('IO') and the only reason given for belatedly nominating the accused as stated by the complainant was that he had forgotten to do so;

- iii) Co-accused Shehzad was admitted to bail by the learned Additional Sessions Judge;
- iv) The other co-accused, namely, Mukhtar, was declared by the IO to be innocent; and
- v) The cause of death is shrouded in mystery.

3. The complainant says that he is an eyewitness of the crime yet did not nominate anyone in the FIR, and only did so through the supplementary statement, by simply stating that he had forgotten to do so earlier. Furthermore, co-accused Shehzad has obtained bail and neither the State nor the complainant has moved to cancel it and the other co-accused Mukhtar was declared innocent in the investigation, which undermines the supplementary statement of the complainant. These facts taken together make this a case of further inquiry. Therefore, this petition is converted into an appeal and allowed and the impugned order of the High Court is set aside. The appellant is admitted to bail in the aforementioned case subject to furnishing bail bond in the sum of one hundred thousand rupees with one surety in the like amount to the satisfaction of the Trial Court. Needless to state any observation made herein would not adversely affect the case of either party.

4. The learned Additional Prosecutor General, Punjab, accompanied by the IO, stated that the *challan* has been submitted in the Trial Court but when we asked him to read it we were informed that the IO has not brought its copy. We are informed that the IO travelled all the way from District Sargodha, undoubtedly at public expense, yet did not bring with him the relevant police papers, including the *challan*. Such conduct by the prosecution/IO delays cases, causes inconvenience and submissions are made on the basis of conjecture. In this case, as we have noted in many others, the prosecution department/law officers on every query put to them turn to the IO, who then ruffles through his file (if he has brought it) to answer it. We expect that once notice has been issued, as in this case, the law officer attending to the case would have the relevant information with him, and not to continuously ask the IO in Court. In the twenty-first century, with cellular phones in nearly every pocket, for the IO to physically bring the police file may also not be required; copies

of *challan*, statements recorded under section 161 of the Criminal Procedure Code, forensic, medical and other reports can be transmitted digitally/electronically and printed out for the consideration of the Court.

5. The presence of the IO without bringing with him the relevant papers, including copy of the *challan*, is inexplicable. Whether the department decides to take action against him in this regard is left to the discretion of the department. Copy of the order passed today be sent to the District Police Officer, Sargodha and to the Prosecutor General, Punjab.

Judge

Judge

Bench-III
Islamabad
01.02.2022
(M. Tauseef)

Approved for Reporting