

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

Criminal Petition No. 407 of 2022

*(Against the order dated 21.03.2022 passed by the
Peshawar High Court, Peshawar in Cr. Misc. B.A.
No. 508-P of 2022)*

Janab Ali

Versus

The State, etc.

... *Petitioner*

... *Respondents*

For the Petitioner:

Mr. Astaghfirullah, ASC
Mr. Anis Muhammad Shahzad, AOR

For the State:

Mian Shafaqat Jan, Addl. A.G.
Mr. Yaseen Farooq, R.P.O.
Muhammad Fayyaz, S.P.
Syed Jameel, D.S.P.
Numair Khan, Inspector

For the complainant:

Mr. Muhammad Usman Turlandi, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

12.05.2022

ORDER

Qazi Faez Isa, J. On the last date of hearing we had directed that the senior most police officer in the area should attend, as a number of questions had arisen regarding the murder of a 37 year old woman on the pretext of honour and our queries had not been properly addressed. Mr. Yaseen Farooq, the Regional Police Officer of Mardan Division, is in attendance and states that after the matter came to his notice the crime was further investigated, and if required, a supplementary *challan* may be submitted. He states that though there are about fifty lady constables in his Division there is not a single lady police officer to investigate crimes. This is quite surprising since Mardan Division is a populous Division comprising of five Districts: Swabi, Nowshera, Mardan, Charsadda and Mehmand.

2. A lady police officer should be associated with these type of cases particularly where the complainant and/or the witnesses are ladies, who may not be forthcoming before male police officers, are intimidated and/or actively conceal the truth of the matter. In such cases, usual methods in investigating crimes may also not reveal the truth. And, the emphasis placed on the complainant's statement needs careful and proper consideration. Circumstantial evidence and the stated motive be tested for veracity, and it be explored whether behind the crime there was another motive.

3. In the investigation of rape cases the Province of Punjab has formulated '*Standard Operating Procedure (SOP) for Investigation of Rape Cases*' dated 20 August 2013. If something similar is done in the Province of Khyber Pakhtunkhwa with regard to rape cases and in respect of crimes committed against women on the pretext of honour it will help to better investigate and prosecute those who commit such crimes. Reference in this regard may also be made to the order of this Court in the case of *Babar v The State* (2020 SCMR 761).

4. When women are done to death on account of an allegation or suspicion of impropriety on their part it is a matter of grave concern. The Holy Qur'an stipulates in surah An-Nur (24) verse 24:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations) – flog them with eighty stripes; And reject forever their evidence, for such men are wicked transgressors -

Abdullah Yusuf Ali in his '*Translation and Commentary*' of the Holy Qur'an comments on this verse, as under:

'The most serious notice is taken of people who put forward slanders or scandalous suggestions about women without adequate evidence. If anything is said against a woman's chastity, it should be supported by evidence twice as strong as would ordinarily be required for business transactions, or even in murder cases. That is, four witnesses would be

required instead of two. Failing such preponderating evidence, the slanderer should himself be treated as a wicked transgressor and punished with eighty stripes. Not only would he be subjected to this disgraceful form of punishment, but he would be deprived of the citizen's right of giving evidence in all matters unless he repents and reforms, in which case he can be readmitted to be a competent witness.'

The Offence of Qazf (Enforcement of Hudood) Ordinance, 1979 made false imputation of adultery or fornication (*qazf*) a crime but this law, which granted women the Qur'anic protection against such slander, unfortunately, has been rendered into a dead letter law. Instead, what is seen is that women are first slandered and then murdered, and more often than not on mere suspicion, and she is buried having lost both her life and reputation in this world. Oftentimes the victim's husband or someone from her own family are the perpetrators, and sometimes both sides join hands in committing the murder, and the truth is suppressed by all.

5. Mst. Jamiat, the mother of the deceased (Huma), had nominated the husband of the deceased, namely, Farman Ali, and his paternal uncle Janab Ali (the petitioner herein) for committing her murder. However, the police during the investigation had also nominated the victim's brother, namely, Muhammad Ali, who we are informed secured bail because the complainant (Muhammad Ali's mother, Mst. Jamiat) did not oppose his bail (order dated 18 February 2020, passed in Criminal Misc. B.A. No. 364-P of 2022 by the Peshawar High Court, Peshawar). It would not be appropriate to comment on Muhammad Ali's bail, because that matter is not before us. However, we may observe that in such cases the mere fact that the complainant does not object to bail may not be a factor, let alone a determinative factor.

6. The learned Astaghfirullah, who represents the petitioner, states that the prosecution case against the petitioner (Janab Ali) is that he came to the house of the complainant, where the deceased had moved to because of a disagreement with her husband (Farman Ali) and that both he and her husband shot and killed her. However, submits learned counsel, that the three spent bullet casings recovered from the crime scene have been forensically tested, which revealed that they were fired from one firearm. He

further submits that Janab Ali was roped in merely because he was the uncle of the principal accused Farman Ali; that subsequent investigation conducted by the police with regard to a recorded conversation between Bastia (sister of the deceased, Huma) and Farman Ali did not implicate the petitioner; that no firearm was recovered from the petitioner; that the petitioner is an elderly man of seventy plus years and keeping him incarcerated whilst the trial continues would deprive him of the few more years that may be left of his natural life, before the trial is concluded.

7. From the foregoing we are of the opinion that the case against the petitioner, Janab Ali, is one of further inquiry. Therefore, this petition is converted into an appeal and allowed by admitting the petitioner to bail, in the case arising out of FIR No. 23, registered at Police Station Parmoli, Swabi on 14 January, 2022, subject to his furnishing bail bond amounting to 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 with regard to the said criminal case will not adversely affect the case of any party before the Trial Court.

8. The concerned to reflect upon and consider how the investigation and prosecution of crimes against women can be better investigated and prosecuted, and to make requisite rules, regulations and/or issue requisite instructions in this regard. This may also have a salutary effect to ensure that womens' name and character is not unnecessarily slandered and besmirched.

9. Copy of this order together with a copy of this Court's order in the case of *Babar v The State* be sent to the Advocate-General, Khyber Pakhtunkhwa, the Province's Provincial Police Officer and to the Home Secretary, for information and compliance. The Provincial Police Officer should also distribute it to all Regional Police Officers in the Province.

Judge

Judge