

JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR.  
JUDICIAL DEPARTMENT

Cr.M./BA No. 1067-P/2017

JUDGMENT

Date of hearing: 30.6.2017

Petitioner: (Yasir) by Mr. Hizar Hayat Daudzai, Advocate.

Respondent: (The State and another) by M/s Syed Qaiser Ali Shah AAG & Astaghfirullah, Advocate.

**WAQAR AHMAD SETH, J.-** Petitioner, Yasir son of Munir Khattak, who is involved in case FIR No. 235 dated 28.4.2014 under Section 302 PPC registered at Police Station Tehkal, Peshawar, was not released on bail on medical ground and postponed his trial under Section 465 Cr.P.C. by the learned Additional Sessions Judge-XII, Peshawar vide order dated 15.5.2017 being incapable of making his defence. Now he has approached this Court for the same purpose.

2. Charge against the petitioner is that he committed the murder of his aunt Mst. Saba Khan.

3. Arguments heard and record perused.

4. Before going into record of the case, first I would like to reproduce the report of Standing Medical

Board, who examined the accused-petitioner on 4.8.2016,  
which reads as under:-

*“The Standing Medical Board comprising the following members assembled in the office of the Medical Superintendent Police/Services, Hospital, Peshawar to examine Accused Yasir S/O Muhammad Munir Khattak.*

*The Standing Medical Board is of the opinion that the accused has a prolonged history of chronic psychiatric illness which is schizoaffective in nature. He has already been treated in different Government Psychiatric facilities of the province.*

*The accused remained under observation in detention Unit central prison Peshawar. The accused remains quallersome, impulsive, unpredictable, at times whispering and talking to self exhibiting hallucinatory behaviour. At times he is not cooperative, refuses to eat and cannot be kept in other jail barracks.*

*The Standing Medical Board is therefore finally of the opinion that the accused still suffers from schizoaffective illness which is a major mental illness. At the moment due to potential risk of dangerousness, he needs treatment in a secure unit like detention unit of Central Prison Peshawar. He needs antipsychotic medication and mood stabilizer drugs under supervision of Psychiatrist and paramedical staff of the Prison and Sarhad Hospital Peshawar. His mental state will be reviewed by Psychiatrist periodically and will be recorded. The Board would review him after one year. At the moment, the accused does not understand the nature of his crime, its consequences and court proceedings therefore; he is unfit to plead in the court of law.*

*The jail paramedical staff may be directed to make sure that the accused is on regular medication. The*

***jail staff needs to make sure that rest of the jail inmates are secure due to potential risk of dangerousness”.***

5. The report of Standing Medical Board would reveal that the accused-petitioner has a prolonged history of chronic psychiatric illness, which is schizoaffective in nature, and he needs treatment. However, at the moment, the accused-petitioner does not understand the nature of his crime. After examining, the accused-petitioner moved bail application before the learned trial Court on medical ground but the same was refused vide order dated 4.11.2016 and thereafter, he approached this Court for the said purpose, which too, was refused with direction to the learned trial Court to initiate proceedings under Sections 464/465/466 Cr.P.C. vide order dated 16.12.2016. In compliance thereof, the learned trial Court summoned Dr. Muhammad Idress Associate Professor Psychiatry Khyber Teaching Hospital, Peshawar and Dr. Muhammad Tariq Psychiatrist Govt. Sarhad Hospital, Peshawar being members of Standing Medical Board, who examined the accused-petitioner on 4.8.2016. Both the doctors appeared before the Court and recorded their statements as CW-1 & CW-2 wherein they confirmed that the accused-petitioner is suffering from schizoaffective disorder for the last 7/8 years, which is a major mental illness and needs proper treatment but inspite of that, the learned trial Court did not

release him on bail and postpone his trial under Section 465 Cr.P.C. till the curement of his disease. Section 466 Cr.P.C. says that:

***“Release of lunatic pending investigation or trial. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.***

***(2) Custody of Lunatic.—If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit and shall report the action taken to the Provincial Government:***

***Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Provincial Government may have made under the Lunacy Act, 1912”.***

When the learned trial Court, after initiating proceedings under Sections 464/465/466 Cr.P.C., realized that the accused-petitioner is incapable of making his defence then for what purpose, he should be kept in jail for indefinite period although section 466 Cr.P.C. is clear on

the subject, thus, the denial of such a relief to the accused-petitioner is against the universal principle of justice. It is the rock bed principle of justice that “let the heaven fall but justice shall prevail”. In such like matters allowing the public policy to make way by entering into the portals of justice then the majesty of law shall run out through the back door. It is the hallmark, distinctive as well as exclusive quality of a Judge to be firm and stern in the matter of doing justice and at no occasion shall permit exterior elements of whatever influence, menace and mischief to deter it from doing justice hence, the denial of relief to the petitioner by the learned trial Court on medical ground and such fact was also admitted by the both the doctors in their statements, so recorded, is in disregard of the well-settled principle of law and justice.

6. According to Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, it is indefeasible right of every individual within the State to enjoy the protection of law and to be treated in accordance with law. No action with regard to the life, liberty body, reputation or property of any person shall be taken except in accordance with law. Again under Article 9 of the Constitution, it is the foremost responsibility of the State to protect the life and liberty of every person residing its territory. This obligatory duty pertains to the realm of law enforcing agencies and the

Courts have a very little concern with that area allotted to these agencies.

7. If a Court of law succumb to pressure tactics or fear of threat at the hands of certain elements or a segment of the society and on that account denies justice to any person who is entitled to it as of right would not be conducive for the System of Justice, the Judges would fall prey and become hostages in the hands of those who have no knowledge about the principle of justice. Such an approach and attitude would definitely prove destructive for the fair administration of justice in which the people of the country still have unshaken faith and confidence. True that Judges must know about the prevailing circumstances in the society but for the purpose of evolution and development of justice system. In my humbly opinion, the learned trial Court was not right in refusing the grant of bail to the petitioner on medical ground, despite the fact that both the doctors have admitted that he is suffering from schizoaffective being chronic and severe mental illness, and he needs proper medication. Since the accused-petitioner is suffering from mental disorder and incapable of making his defence, therefore, his case is squarely covered under Section 466 read with Section 497 Cr.P.C.

8. In view of the above, this bail application is accepted and the accused-petitioner is admitted to bail

provided he furnishes bail bond in the sum of Rs. 700,000/- (Rs. Seven lacs) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

9. Before parting with the judgment/order, I must observe that the accused-petitioner shall be properly taken care of and he shall be managed and controlled in a manner so that he is prevented from doing/causing injury to himself or any other person. He shall be preferably admitted in the hospital for management and treatment under the control and supervision of Psychiatric for his rehabilitation. The Director General Health, Khyber Pakhtunkhwa, Peshawar is directed to constitute a Medical Board for the purpose, who shall examine the accused-petitioner once in a month and submit its report to the learned trial Court and when the Standing Medical Board found the accused-petitioner that he is capable of making his defence, then his trial be restored.

10. Above are the reasons of my short order of even date.

**Announced**

**30.6.2017**

\*Nawab Shah\*

**J U D G E**