

Judgment Sheet

**IN THE PESHAWAR HIGH
COURT, PESHAWAR**
(Judicial Department)

Cr.MBA No. 1404-P/2016.

Lal Zada Vs The State.

JUDGMENT

Date of hearing. 10.10.2016

**Petitioner(s) by: Mr. Javed A. Khan
Advocate.**

State by: Mr. Waqar Ahmad AAG.

Complainant by: Nemo.

ISHTIAQ IBRAHIM, J:- Lal Zada

s/o Hanif Ullah has approached this Court for grant of bail in case FIR No.39 dated 13.01.2005, u/ss 302/324 PPC, P.S. Hoti, District Mardan.

Earlier his prayer for bail was dispelled by learned Additional Sessions Judge, Mardan vide order dated 6.5.2016.

2. Gist of the report made by the complainant Ishfaq is that on

13.1.2005 at 8.00 am he while being accompanied by Khan Zada left his house and when reached the alleyway of accused/petitioner, he emerged from his house and started firing at the complainant party as a result of which complainant, Khan Zada and Mst. Zubaida were hit and got injured. Lateron Khan Zada succumbed to the injuries. Section 302 PPC was also levelled in the FIR.

3. After the arrest of petitioner, he submitted bail application to the trial Court, from very inception agitating his prayer for bail on ground of sickness.

4. Petitioner submitted a separate Cr.Misc: No.58-P/2016 with a prayer for his examination through Standing Medical Board which was accordingly allowed by this Court vide order dated 14.7.2016 with

direction to Director General Health to do the needful.

5. On 27.7.2016 Standing Medical Board examined the petitioner and submitted their report which is transcribed below:-

"The Standing Medical Board is of the opinion that he is having Dysphasia and stroke (CVA) needs treatment in tertiary care hospital."

6. This Court vide order dated 18.8.2016 again referred the petitioner to Standing Medical Board to clarify whether treatment can be provided in jail or in judicial custody to petitioner. Subsequent report of Standing Medical Board dated 7.9.2016 was received and is reproduced for convenience as under:-

"The Standing Medical Board is of the opinion that he is having Dysphasia and Stroke (CVA). Treatment in tertiary care center means he cannot be treated in jail premises requires treatment in Teaching Hospital."

7. It is pertinent to mention that since filing of the present bail petition, repeated summons were issued against the complainant for procuring his attendance before the Court but he did not turn up. So the learned AAG for the State was directed to assist this Court. Arguments of learned counsel for petitioner, learned AAG heard and record gone through with their valuable assistance.

8. Bail on the ground of sickness or infirmity is granted only when Court is satisfied that the ailment from which the person is suffering is such that his treatment is not possible in jail or whilst in custody he cannot be provided proper treatment and care. Bail under section 497(1), Cr.P.C is only discretionary and discretion is only exercised, when the Court comes to

the conclusion that despite advance medical technology and availability of most modern ways and means of treatments a particular accused still needs, such an extra and constant care, which is not available in jail.

It has been held by the apex Court in case of "Malik Muhammad Yousafullah Khan Vs The State & another (PLD 1995

SC 58) that:-

"The correct criteria for grant of bail to an accused in a non-bailable case, on medical ground, in view of this Court, would be that the sickness or ailment pith which the accused is suffering is such that it cannot be properly treated Within the premises of jail and that some specialized treatment is needed and continued detention of accused in Jail is likely to affect his capacity or is hazardous to his life."

9. The reports of both the Standing Medical Board conducted for examination of petitioner would reveal that the Board was comprising

of three Members and one Chairman, who opined that the petitioner having Dysphasia and Stroke (CVA) cannot be treated in jail premises. The question arises for consideration whether findings of three medical experts making diagnosis of the illness of the petitioner with positive recommendation that he needs medical treatment which may not be possible in jail can be rejected and brushed aside particularly when the authenticity of said report has not been challenged that it is factually incorrect or obtained for extraneous consideration.

10. Apart from above, petitioner was also summoned from jail for satisfaction of the Court. He was brought on Wheel Chair and on query, the police officials accompanying the petitioner, disclosed that the petitioner was brought in a vehicle

from jail and then on wheel chair as he was unable to walk due to his sickness. This Court also noticed the condition of the petitioner who was unable to talk coherently and to move without other's support. Wisdom is derived from the case **"Muhammad Nawaz Vs The State" (1998 P.Cr.L.J 166 Lahore)**.

11. In the light of above reports of the Standing Medical Board, this Court is of the view that the petitioner is, undoubtedly, sick and as such, needs treatment in conducive conditions free from any kind of pressure. In custody, it cannot be said that the petitioner shall have full peace of mind. His recovery from ailment shall, surely, be slow if he remains in detention and his life may seriously be open to danger if he is not released on bail. Consequently, this petition is

allowed and petitioner is admitted to bail subject to furnishing bail bonds to the tune of Rs.2,00,000/- (Two lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

The above are reasons of my short order of even date.

Announced:
10.10.2016.

J U D G E

"A.Qayum"