

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT
JUDICIAL DEPARTMENT.**

Cr Misc (Bail Application) No.1882-P/2022

ORDER

Date of hearing : 11th August, 2022
Petitioner (Akhtar Zaman) : By **M/s Syed Abdul Fayaz and Ijaz Muhammad Khan, Advocates.**
Respondent (State) : By **Mr. Mujahid Ali Khan, Additional Advocate General.**
Complainant (Habib-ur-Rehman) : By **Mr. Hussain Ali, Advocate.**

QAISER RASHID KHAN, CJ.-Accused-petitioner

seeks his release on bail in case FIR No.384 dated 15.07.2016 under Sections 302 / 34 PPC of Police Station Urmar, District Peshawar.

2. As per the prosecution story, the accused-petitioner along with his brothers / absconding co-accused namely, Afsar Zaman and Khurshid Zaman are involved in the murder of Roidad Gul and Rab Nawaz, the father and brother of the complainant Habib-ur-Rehman.

3. Earlier, the bail application No.1031-P/2021 of the accused-petitioner was dismissed on merits by this court vide order dated 23.04.2021 and presently he is again before this court seeking bail on medical grounds, which somehow,

was not agitated by him both in the earlier application as well as during course of arguments at the relevant time.

4. It was after the trial commenced, when the accused-petitioner for the first time raised the plea of being of unsound mind and in turn filed an application for the constitution of a medical board, wherein on 15.06.2021, the following order was passed:-

“The learned counsel for accused/petitioner moved an application for constitution of medical board of the accused/petitioner as he is not in good mental condition. The medical board is hereby directed to be constituted and the accused be kept under observation for 6 weeks in order to the requirements of mental health Ordinance. MS of Police and Services Hospital is directed to constitute a medical board of accused Akhtar Zaman and keep the accused under observation for required period and submit report to this court.”

Accordingly, he was examined by the Standing Medical Board, which opined as follows vide its report dated 14.09.2021:-

“Accused Akhtar Zaman S/O Muhammad Zaman was assessed by the board members. He was also assessed by the Psychiatrist Central Prison Peshawar. He has no major mental illness. The Standing Medical Board is of the opinion that he is mentally sound and can face the trial in court of law.”

5. It was again on 25.10.2021, when the issue qua mental condition of the accused-petitioner was agitated before

the learned trial court and accordingly, he was again referred to the Standing Medical Board in the following terms:-

“Though the board has opined that presently the accused is fit and can face the trial but the learned counsel for accused requested that he is engaged by brother of the accused and the accused abnormal and he is suffering with acute schizophrenia. This court observed the physical appearance of the accused and found that his physical appearance before the court is not normal. It might be that the accused have made this appearance deliberately or he might be repeated by the said attack of mental disease. Whatever the situation, to secure the end of justice, the accused is referred to Police and Services Hospital. MS police and services hospital is directed to constitute a medical board of accused Akhtar Zaman and keep the accused under observation for required period and report submit to this court.”

Pursuant thereto, the accused-petitioner was re-examined by the Standing Medical Board, which opined as under vide its report dated 07.04.2022:-

“Accused Akhtar Zaman S/O Muhammad Zaman was assessed by the board members. He is suffering from bipolar affective disorder which is a major mental illness with episodes of severe mood disturbance where the patient is of unsound mind during such episodes.

It is likely that the patient with bipolar affective disorder act without knowing the consequences of his / her act during the episodes of mood disturbance. However, in the current case it could not be confirmed from the FIR, treatment record and behavior of the accused that the accused was of sound mind or otherwise at the time of committing

the crime. The accused has record of treatment with antipsychotic before the date of incident/ FIR.

Accused has responded poorly to treatment during his stay in the detention unit and it appears less likely that he will make significant recovery from this illness.

The Provincial Standing Medical Board is of the opinion that the accused is still symptomatic and not fit to face the trial in the Court of Law and needs continue treatment in Detention Unit.”

On the basis of such report, the accused-petitioner filed an application for his release on bail on medical grounds, which was declined by the learned trial court vide order dated 20.06.2022. However, on the same very date, the learned trial court adjourned the trial proceedings sine die in the following manner:-

“The board reported bipolar disorder and reported that accused is not in a position to face the trial however on point of his mental illness on the day of occurrence the board was not in a position to determine it from record. The observations of this court previously after conducting a conversation session with accused was otherwise. However giving respect, to the opinion of board and the arguments of learned counsel for accused facing trial, the accused is referred in custody to Police & Services Hospital, in mental Ward for his treatment. As the medical board opined the disease of accused in intervals so he be referred to this court for trial when he obtained a position to understand the proceedings from the curable disease of bipolar disorder with intervals. The proceedings of trial is adjourned Sine Die till recovery of accused from his

mental illness and he be produced to this court whenever he wanted to facing trial or the board declared him fit for facing the trial."

Hence, the instant petition by the accused-petitioner.

6. The learned counsel for the accused-petitioner contend that when, as per the fresh report of the Standing Medical Board, the accused-petitioner is admittedly a patient of bipolar affective disorder disease, then he is entitled to be released on bail as required under section 466 CrPC. notwithstanding the tenor of the FIR and the facts mentioned therein. They further add that the learned trial court without adhering to the ibid provision of law could not have sine die adjourned the trial proceedings.

7. As against that, the learned Addl. AG assisted by the learned counsel for the complainant vehemently argue that the accused-petitioner was adjudged to be a normal person by the earlier Standing Medical Board but, in order to save himself from the trial proceedings, he made another attempt by tactfully acting like a schizophrenic patient and was thus able to get a favourable medical report from the subsequent Standing Medical Board. They further argue that being a hardened, dangerous and desperate criminal keeping view his involvement in fourteen other identical nature cases, the accused-petitioner is not entitled to the grant of bail within the meaning of the fourth proviso of section 497 CrPC.

8. Arguments heard and the available record perused.

9. Before attending to the application in hand of the accused-petitioner, it would be more apt to refer to section 466 CrPC, which is the relevant provision of law on the subject and hence reproduced as under:-

466. 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:

10. In the present case, after the commission of the offence way back in the year, 2016 whereby the father and brother of the complainant were allegedly done to death by the accused-petitioner and his two absconding brothers, his arrest was made possible on 20.02.2021 after about five long years. After that, his bail applications were dismissed on merits upto this court. However, neither any plea of the alleged mental sickness was agitated by him in the first round nor even any medical history in this regard was brought before any forum.

During the trial proceedings, it was on the request of the accused-petitioner pleading some mental ailment, when the Standing Medical Board was constituted, which held him to be a normal person vide its report dated 14.09.2021. Somehow, within a span of barely seven months, the accused-petitioner again pleaded to have some mental problem and in turn the second Standing Medical Board was constituted. The subsequent Standing Medical Board would show that barring one member Dr. Sher Ayub, Assistant Professor Psychiatry, KTH, who was replaced by another Assistant Professor Psychiatry Dr. Aziz Muhammad of the same hospital, the other members including chairman were the same. However, this time around, the accused-petitioner was declared to be a patient of bipolar affective disorder and thus not fit to face the trial in the court of law and that he needs continuous treatment in a detention unit. Keeping in view such report of the Standing Medical Board, the learned trial court adjourned the trial proceedings sine die vide order dated 20.06.2022.

During the course of submissions, this court has been informed that the accused-petitioner is presently taking treatment in the mental hospital.

11. No doubt, sub-section (1) of Section 466 CrPC provides a mechanism for the release of an accused of unsound mind but such provision of law cannot be stricto

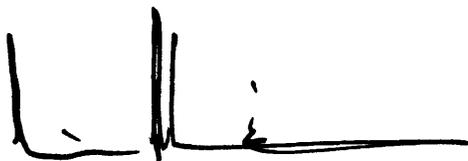
sensu applicable to every case like the instant one. Even otherwise, keeping in view the conflicting opinions of the two Standing Medical Boards and also his previous criminal history to be involved in several different FIRs, the accused-petitioner cannot press into service sub-section (1) of section 466 CrPC for his release on bail. That is how the learned trial court has rightly ordered to refer him to the Mental Ward of the Police & Services Hospital and in the meanwhile adjourned the trial proceedings sine die. Such proceedings can be revived as and when the accused-petitioner is declared fit by the Standing Medical Board after his recovery from such ailment.

12. Such being the position, no case is made out for the grant of bail to the accused-petitioner on medical grounds.

Accordingly, this petition stands dismissed.

Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, shall in no way prejudice the proceedings before the learned trial court where the case be decided on its own merits after recording evidence.

Announced
11. 08. 2022


CHIEF JUSTICE

(Fayaz)

(S.B) Justice Oaiser Rashid Khan, CJ