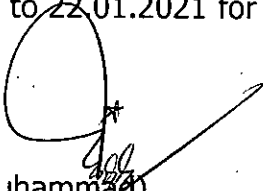


13.11.2020

Appellant in person present.

Muhammad Jan learned Deputy District Attorney alongwith
Muhammad Asif ASI for respondents present.

Lawyers are on general strike, therefore, case is
adjourned to 22.01.2021 for arguments, before D.B.

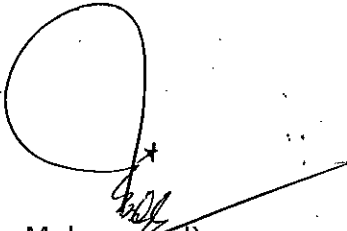

(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

22.01.2021

Nemo for the appellant. Asstt. A.G for the respondents
present.

It is already past 02.15 P.M on a Friday and despite
repeated calls no one appeared on behalf of the appellant. It is,
therefore, dismissed for non-prosecution. File be consigned to
the record.


(Mian Muhammad)
Member(E)


Chairman

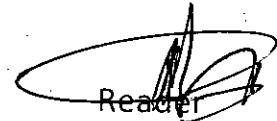
ANNOUNCED

22.01.2021

29-4.2020

Due to COVID19, the case is adjourned to

13/7/2020 for the same as before.



Reader

13.07.2020

Due to COVID-19, the case is adjourned to 03.09.2020
for the same.

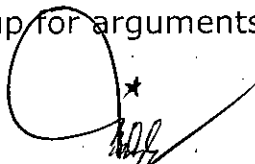


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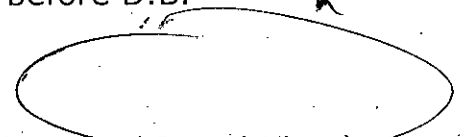
03.09.2020

Appellant has not forth come at the moment 3:15 P.M
nor anyone else representing him has appeared on his
behalf. Mr. Usman Ghani, District Attorney alongwith
representative of the department Mr. Umer Sher, Inspector
(Legal) are also present.

Since the instant appeal was adjourned twice due to
spread of pandemic COVID-19, therefore, it is deemed
appropriate to issue notice to appellant as well as his
counsel, therefore, process be issued accordingly and file to
come up for arguments on 13.11.2020 before D.B.



(Mian Muhammad)
Member (Executive)



(Muhammad Jamal Khan)
Member (Judicial)

15.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 03.03.2020 for further proceedings/arguments before D.B.


Member


Member

03.03.2020

Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Taza Gul, SI for respondents present. Appellant submitted fresh wakalatnama of Mr. Niaz Muhammad, Advocate in his favour which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 29.04.2020 before D.B.



Member


Member

29.08.2019

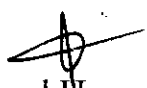
Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 15.10.2019 before D.B


Member


Member

15.10.2019

Brother of the appellant, on behalf of the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Brother of the appellant submitted application for adjournment on the ground that learned counsel for the appellant has gone to Islamabad and cannot attend the Tribunal today. Application is placed on record. Case to come up for arguments on 03.12.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

03.12.2019

Appellant in person and Mr. Ziaullah, DDA for the respondents present.

The appellant has submitted an application for adjournment on account of engagement of his learned counsel before the Honourable High Court Bench at Saidu Sharif.

Adjourned to 15.01.2020 for arguments before D.B.

Member

Chairman 


14.03.2019

Appellant in person present and seeks time to deposit and security fee. Granted with the direction to deposit and security fee within seven (07) days. Thereafter notices be issued to the respondents for written reply/comments. Adjourn. To come up for written reply/comments on 29.04.2019 before S.B.


Member

29.04.2019


None for the appellant present. Security and process fee not deposited. Notice be issued to the appellant and his counsel to submit security and process fee within one week. Case to come up further proceedings on 27.06.2019 before S.B.


(Ahmad Hassan)
Member

27.06.2019

Appellant in person and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Bashir Inspector present. Representative of the respondent department submitted written reply/comments. Adjourn. To come up for rejoinder, if any, and arguments on 29.08.2019 before D.B .


Member


Appellant Deposited
Security & Process Fee

03.01.2019

Counsel for the appellant Misbah Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department as Driver, he was dismissed from service via order dated 30.05.2018 by the competent authority on the allegation of absence from duty as well as involvement in criminal case vide FIR No. 911 dated 27.12.2017 under section 17 (3) Harab/15-AA/412 PPC PS Gulbahar. It was further contended that the appellant filed departmental appeal on 29.06.2018 but the same was not responded hence, the present service appeal. It was further contended that since the appellant was falsely involved in the aforesaid criminal case and he was arrested by the local police in the said criminal case therefore, it was beyond the control of the appellant to attend the duty. It was further contended that major penalty was imposed upon the appellant but neither any absence notice was issued to the appellant at his home address nor proper inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 14.03.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal no- 1216/2018

Misbah Ullah

Versus

Inspector General of Police & Others

INDEX

S#	Description of Documents	Annexures	Page Nos
1	Copy of FIR	A	8
2	Copy of the Final Show-cause Notice, statement of allegation & Charge-sheet & reply	"B" "C" & "D" "D1"	9, 10, 11 12
3	Impugned Order Departmental Appeal	"E" & "E1"	13, 14 15-16
4	Copy of the statement of the complainant	"F"	17
5	Other Documents & Copy of Bail Order	"G"	18-20
6	Wakalat Nama		

Dated: 28/09/2018

**Appellant
Through**

**Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar.**



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal no. 1216/2018

Misbah Ullah S/o Niaz Muhammad Ex- Driver
Constable No. 52 R/o Badezai P.O Nasir Bagh, Khyber Pakhtunkhwa Service Tribunal
PeshawarAppellant.

Diary No. 1448

Dated 03/10/2018

Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar. CPO Peshawar.
2. Additional I.G Investigation KPK Peshawar.
3. D.I.G Investigation/ Admin CPO KP Peshawar. CPO Peshawar. *HEAD Quarter*
4. Senior Superintendant of Police Investigation Unit CPO Peshawar.
5. District Police Officer Peshawar.

.....Respondents

APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED ORDER DATED 30-05-2018
VIDE ANNEXURE 'A' WHEREBY THE
APPELLANT HAS BEEN TERMINATED
FROM HIS SERVICE.

PRAYER,

Filed to-day

Registrar
3/10/18

ON ACCEPTANCE OF THE APPEAL, THE
IMPUGNED ORDER DATED 30/05/2018 AT
ANNEXURE 'E' MAY BE SET ASIDE AND
THE APPELLANT MAY BE REINSTATED IN
SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth:-

Brief facts leading to the instant appeal are as
under:-

- (20
1. That the appellant was serving as a Driver / Constable in Peshawar with the respondents.
 2. That the appellant served the department with the honesty and the entire satisfaction of the respondents and has 9 years of unblemished record on the service on his part.
 3. That during performance of the duties, the appellant was implicated in a false case and resultantly was arrested on the basis of concocted FIR. (Copy of FIR is attached as annexure "A").
 4. That on the basis of the said FIR, the petitioner/ appellant was served with a show-cause notice alongwith the statement of allegation and charge-sheet which was replied and denied by the appellant. (Copy of the Final Show-cause Notice, statement of allegation & Charge-sheet and *reply* attached as annexure "B" "C" & "D" **D1**
 5. That on the basis of the Final Show-cause notice, handed over to the Petitioner/ Appellant consequently without any giving chance of hearing and providing any opportunity of defense and

3

cross-examining the witness the 30/05/2018 order was passed and the services of the Appellant/ Petitioner were terminated. *(copy of impugned order is annexure "E")*

6. That the appellant filed a departmental appeal against the said dismissal order on 29/06/2018 but the respondent has put diff ear to the said. (Copy of the Departmental Appeal is attached as annexure ~~"E"~~ E1

7. That the appellant feeling aggrieved from the impugned order and without any fruit of the departmental appeal, now filed the instant appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:

A. That the impugned order passed by the respondent is against law, facts & principle of natural justice, hence not tenable in the eyes of law.

B. That no regular formal inquiry was conducted nor did the appellant was associated with any sort of

inquiry which turned the whole proceedings illegal.

- C. That no witness was examined in the presence of the appellant nor has any opportunity been awarded for cross-examining the same.

- D. That the appellant is on bail and the case has not been yet decided by the learned Trial Court in order to thrashed out the real truth after completing all the cordal formalities and record the statements of the witness in support of the alleged FIR and allegation against the appellant.

- E. That the complainant of the FIR has already submitted before the Hon'ble Trial Court that he has merely charged the appellant on the basis of suspicion and by now on his satisfaction, he has no plan or grievance and categorically stated before the Hon'ble Court that his this statement is true and voluntary and without any coercion and if the Hon'ble Court even acquit the present appellant out of the criminal charges, he would be having no excuse. (Copy of the statement of the complainant is attached as annexure "F").

F. That the impugned order on the basis of alleged FIR is in fact a pre-trial conviction which is not tenable in the eyes of law.


G. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

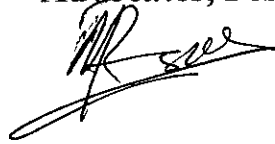
It is, therefore, prayed that on acceptance of this appeal, the impugned order dated 30/05/2018 may be set aside and the appellant may be reinstated in service with all back benefits to meet the ends of justice.

Dated: 28/09/2018


Appellant

Through


Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar.



65

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

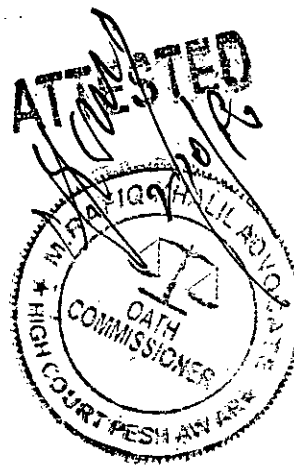
Misbah Ullah

Versus

Inspector General of Police & Others

Affidavit

I, **Misbah Ullah S/o Niaz Muhammad Ex- Driver Constable No. 52 R/o Badezai P.O Nasir Bagh, Peshawar,** do hereby solemnly affirm and state on oath that the departmental appeal has never been returned to me with direction to approach the proper forum. My above statement is true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



Deponent

Misbah Ullah

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Misbah Ullah

Versus

Inspector General of Police & Others

ADDRESSES OF PARTIES

APPELLANT.

Misbah Ullah S/o Niaz Muhammad Ex- Driver
Constable No. 52 R/o Badezai P.O Nasir Bagh,
Peshawar

RESPONDENTS:

1. Inspector General of Police Khyber Pakhtunkhwa
Peshawar. CPO Peshawar.
2. Additional I.G Investigation KPK Peshawar.
3. D.I.G Investigation/ Admin CPO KP Peshawar.
CPO Peshawar. *HEAD Quater*
4. Senior Superintendant of Police Investigation Unit
CPO Peshawar.
5. District Police Officer Peshawar.

Dated: 28/09/2018

Appellant
Through

[Signature]
Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar. *[Signature]*

(Heller Copy)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع پشاور

تاریخ و وقت وقوع 27/12/017 وقت 18:20 بجے

تھانہ: گلہار

علت نمبر 911

تاریخ و وقت رپورٹ	27/12/017 وقت 18:50 بجے چاکیدگی پرچہ 19:20 بجے
نام و سکونت اطلاع دہندہ مستغیث	فواد علی ولد خونہ گل ساکن چارباغ جان آباد ضلع سوات
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	AA-15, 412, (3) 177 راجہ
جائے وقوعہ فاصلہ تھانہ سے اور سمت	جی ٹی روڈ نزد اورسڈیل حاجی کمپ
نام و سکونت ملزم	آمدہ تحریری مراسلہ پر مقدمہ درج رجسٹر کیا جاتا ہے
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو، تو وجہ بیان کرو	بطور پیش رپورٹ
تھانہ سے روانگی کی تاریخ و وقت	

(ابتدائی اطلاع نیچے درج کرو)

بوقت صدر بچے ایک تحریری مراسلہ منجانب عبداللہ جان SI آن ڈیوٹی موبائل آفیسر بدست کنشیل ساجد 2611 موصول ہو کر بمضمون ذیل ہے، بخدمت آفیسر انچارج تھانہ گلہار بدوران گشت حسب اطلاع جائے وقوعہ بالا آکرموقع پر مسمی فواد علی ولد خونہ گل قوم وردک بمر 23 سال ساکن جان آباد چارباغ ضلع سوات موجود پا کر یوں رپورٹ کرتا ہے کہ میں معہ ہمراہی شہاب الدین ولد سید انور سید ساکن شیخوڑی منگور سوات خاستہ خان اینڈ اکرام کرنسی آپکے پیچ منگورہ سوات میں ملازم ہیں آج بوقت فریب 13:30 بجے منگورہ سوات سے مختلف غیر ملکی کرنسی پشاور چوک یادگار لا کر خانے صراف کیا دکان میں پاکستانی روپوں میں تبدیل کر کے جو مبلغ -/9628165 روپے بنے رقم کو دو بیگوں میں ڈال کر ایک بیگ میں نے اور دوسرا بیگ ہمراہی شہاب الدین نے اٹھا کر اشرف روڈس فرڈوس سنیما کو پہنچے اور وہاں سے -/100 روپے کرایہ بذریعہ رکشہ میں بیٹھ کر حاجی کمپ اڈہ کیلئے روانہ ہو مجب بوقت وقوعہ جائے وقوعہ بالا پر پہنچے تو اس دوران تین موٹر سائیکل پر چھ کسان آ کر جن میں سے دو اشخاص آگے آ کر ہم دونوں پر پستول ایم کر کے ہمراہی شہاب الدین سے رقم کا بیگ چھین لیا جبکہ دوسرے نے مجھ سے رقم کا بیگ چھین لیا میرے مزاحمت پر ایک نے مجھ پر پستول کی بٹ سے وار کر کے جس سے میں سر پر لگ کر زخمی ہوا اور

attached to be
true copy of original

اللہ

FINAL SHOW CAUSE NOTICE

WHEREAS, you, Driver/Constable Misbahullah No. 52 while posted in MT Staff, Investigation Branch CPO, Peshawar committed gross misconduct, as defined in Rule 3 of Police Rules 1975 that "Peshawar as follows:-

"That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghیب Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/412-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab-ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching more than Nine Million rupees from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 16,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zxmco (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you were sent to the Central Jail Peshawar"

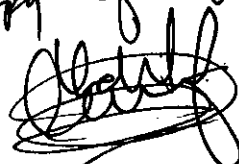
Resultantly you were issued charge sheet with summary of allegations. Enquiry Committee consisting of DSP Fazle Maula and Inspector Sayar Khan of Investigation Branch CPO was constituted to enquire into the matter.

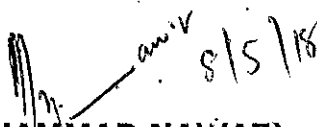
WHEREAS, the Enquiry Officer finalized the enquiry proceeding by giving you full opportunity of defence as well as cross examination and the statements of all PWs have been recorded. Consequent upon completion of enquiry proceedings, the Enquiry Committee in its findings reported that according to CDR you had been in contact with your co-accused on the day of occurrence and that all of you (charged accused) belong to an organized criminal gang. Furthermore out of the snatched amount, sixteen Lakh rupees have been recovered from your house at your pointation. The available evidence confirmed your involvement in the crime as stated above. The Enquiry Committee held you guilty of the charges and described you as stigma on the forehead of the Police department.

AND WHEREAS, on going through the Findings and recommendation of the Enquiry Committee, material placed on record and other connected papers including your defence before the Enquiry Committee, I am satisfied that you have committed the misconduct and are guilty of the charges levelled against you as per statement of allegations already conveyed to you which stands proved and render you liable to be awarded punishment under the said Rules.

NOW THEREFORE, I, Muhammad Nawaz SSP/Investigation CPO Peshawar competent authority have tentatively decided to impose major penalty upon you, as defined in the said Rule.

You, are, therefore, required to submit reply to this Show Cause Notice within Seven days of the receipt of this notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and an exparte action shall be taken against you. In the meantime also intimate as to whether you desire to be heard in person or otherwise.

attested to be true
copy of original



(MUHAMMAD NAWAZ)
Senior Superintendent of Police,
Investigation Branch KP
Peshawar

DISCIPLINARY ACTION

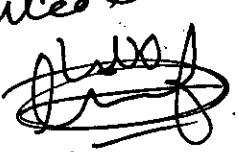
I, Muhammad Nawaz SSP/Investigation, CPO Peshawar being competent authority am of the opinion that you Driver/Constable Mishahullah No. 52 of Investigation Unit CPO have rendered yourself liable to be proceeded against departmentally, as you have committed the following acts of omissions/commissions within the meaning of Rule-3 of Police Rules 1975.


STATEMENT OF ALLEGATIONS

" That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghieb Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/412-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab--ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching Rs. 96, 28, 156/- from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 16,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Jynco (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you have been admitted to the Central Jail Peshawar"

For the purpose of scrutinizing the conduct of the said official with reference to above allegations, an Enquiry Committee comprising of Mr. Fazal Maula DSP/Investigation and Inspector Sayar Khan of Investigation Branch CPO is hereby constituted in the matter under Rule-5 of the said Rules.

The Enquiry Committee shall, in accordance with the provisions of said Rules, provide reasonable opportunity of hearing to the accused official, record and submit its finding within 10-days of the receipt of this order and his recommendations as to punishment or other appropriate action against the accused official.

Attended to be true copy



 (MUHAMMAD NAWAZ)
 Senior Superintendent Police,
 Investigation CPO KP,
 Peshawar

78

CHARGE SHEET

I, Muhammad Nawaz SSP/Investigation, CPO Peshawar being competent authority, hereby charge you Driver/Constable Misbahullah No. 52 of Investigation Unit CPO, Peshawar as follows:-

"That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghieb Kharr of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/112-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab--ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching Rs. 96, 28, 156/- from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 15,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zimco (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you have been admitted to the Central Jail Peshawar."

By reasons of the above, you appear to be guilty of misconduct under Rule-3 of Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

You are therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer (s)/Committee, as the case may be.

Your written defence if any should reach the Enquiry Officer (s)/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall be taken against you.

Intimate whether you desire to be heard in person or otherwise.

A statement of allegations is enclosed.

NO. 62/PA-SSP/INVI CPO

DT 09-04-2018

Muhammad Nawaz

(MUHAMMAD NAWAZ)
Senior Superintendent Police,
Investigation CPO KP,
Peshawar

Attested to be true copy
[Signature]

ماری

کولہ خاں راجہ شہزادہ اسماعیل احمدی اور اہل بیت کی باجوہ دستگیر گھوڑے

62/600/99 مورخہ 28/12/99 مورخہ 29/12/99 کی رات

میں داخل ہوئے اور مجھے بیٹے دستگیر کر دیا۔ جہاں یہ تھے

انہوں کو پھانسی سے ڈال کر پتھر سے مار ڈالا گیا۔ اور

مجھے قبور پر لے گیا۔ میں ہمیں مان لوں۔ جب جمعہ کے روز

کا ظلم ڈھایا گیا۔ میں نے مشہور لکھنؤ اور لندن کی

اخباروں سے جاننے کی خاطر میں نے پھانسی کو سنان دینے کا

ایسا۔ سوچا کہ انہوں نے مجھے تھکا دیا ہے۔ پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا


اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

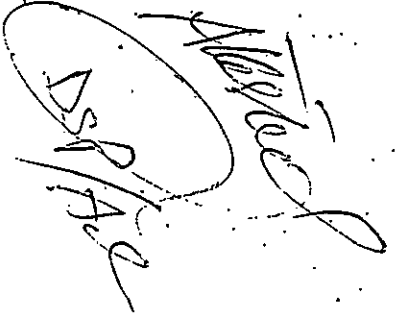
اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

اور 4 نومبر 1999ء کو پھانسی کو سنان دینے کا

attached to be true




(74)

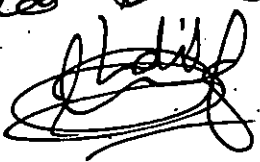
ان کو ایسے کو پیش کرنے کو تیار ہوں۔

چونکہ مقدمہ بحال ہے، لہذا تفتیش اور عدالت میں فرسٹ کلاس ہو رہی ہے۔

کچھ دستاویزات جمع کر کے عدالت میں پیش کرنا چاہئے۔

یہ تفتیش مقدمہ بند کرنے کے لئے کافی ہے۔ حال ہی میں اس کا صحیح سامنا ہو رہا ہے۔
ناویب

23-4-2018
تاریخ: 23-4-2018
52

attested to be true copy


ORDER

This order will dispose off the departmental enquiry against Driver/Constable Misbahullah No. 52 of Investigation Branch CPO Peshawar who was proceeded against departmentally on the following charges: -

"That he was marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghbir Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that Driver/Constable Misbahullah No. 52 alongwith six other co-accused person were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17-(3) Haraba/15-AA/412-PPC P.S Gulbahar, CCP Peshawar and that complainant Fawad Ali & Shahab-ud-din in their statement u/s 164 CrPC charged the above named official alongwith other six accused persons for snatching more than Nine Million rupees from them on gun point. According to the CDR Driver/Constable Misbahullah No. 52 had been in contact with charged co-accused persons and that out of the snatched amount, Rs. 16,00,000/-, one 30 bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zxmco (stated to be owned by one of the accused namely Noor Khan) were recovered from his house at his pointation. He also admitted his guilt in the statement recorded u/s 161 CrPC and after interrogation he was sent to the Central Jail Peshawar."

Resultantly the accused Driver/Constable was placed under suspension and he was issued Charge Sheet with Summary of allegations. Enquiry Committee consisting of DSP Fazal-e-Maula and Inspector Sayar Khan of Investigation Branch CPO was constituted to inquire into the matter.

The Enquiry Committee finalized the enquiry proceeding by giving him full opportunity of defence as well as cross examination and the statement of all PWs were recorded. Consequent upon completion of enquiry proceedings, the Enquiry Committee in its findings reported that according to CDR the accused official had been in contact with his co-accused persons on the day of occurrence and that all of them (charge accused persons) belong to an organized criminal gang. Furthermore out of the snatched amount, sixteen Lakh rupees alongwith weapon of offence i.e. a 30 bore pistol and motorcycle (used in the commission of offence) have been recovered from his house at his pointation.

*attached to be
true copy
[Signature]*

(12)

The accused official was served with Final Show Cause Notice to which he replied. His reply to the FSCN has perused and found unsatisfactory. The undersigned personally given him an opportunity of personal hearing in the Central Jail Peshawar where he was cross questioned but again failed producing cogent reason in self defence.

After going through the case file and available evidence on the record I, the undersigned reached to the conclusion that accused Driver/Constable Misbahulla No. 52 is involved in the above mentioned case. During the course of enquiry as well as cross examination, he failed to produce any cogent any evidence in his support and also failed to give plausible answers to the cross questions. Being involved in dacoity case and also a member of an organized Gang, he had brought bad name for the department. He is stigma on the forehead of Police Department and his retention in the department will never be beneficial for a disciplined Force.

Keeping in view the above, I, the undersigned, hereby dismissed him from the service under Police Rules 1975 (Amended 2014 K.P Police E&D Rules 2014), with immediate effect from the date of absence i.e 23.03.2018.

Order announced.


M. N. Nawaz
(MUHAMMAD NAWAZ)

Senior Superintendent of Police
Investigation Unit, CPO Peshawar.

No. 5881-86 EC/Inv: dated Peshawar, the 30 / 5 / 2018.

Copy of above is forwarded for i/o information and n/action to the :-

1. Addl:IGP Investigation KP Peshawar.
2. DIG Investigation/Admn: CPO K.P Peshawar.
3. DSP Admn: Inv:.
4. Accountant Inv:
5. MTO Investigation.
6. Official concerned.


*attested to be true copy
of original*


خدمت عباد ڈی پی ایٹر جنرل صاحبہ اور ایجوکیشنل آفیسر
توسہ کی رٹائرمنٹ کے لیے ایجوکیشنل آفیسر کے پاس
درخواست برائے بحالی ملازمت

صاف عالی

خودمانہ گزارش بعد حرم 2018/30 کو عباد SSP
ایجوکیشن نے سائل کو ملازمت سے مستعفی کیا ہے۔ جو ان کے
سائل کے خلاف لگائے گئے ہیں۔ وہ سراسر زیادتی اور
نا انصافی ہے۔ چونکہ میں خلاف یہ کہیں باقاعدہ سازش
نے تحت بنایا گیا ہے۔

حرم 2018/24 کو رات 3 بجے عباد کو یہ خبر
نے چھایا مارا۔ اور لے کر تارکے دفتر آتے لایا گیا۔
تھو سے پوچھا گیا کیوں۔ اور حرم 2018/26 کو لے گیا
پولیس کے حوالے کیا گیا۔ اور عدالتی کو ملنے کے خلاف
184 عدالت کے ذریعے درخواستی کرالی گئی۔ پولیس نے
اس کے ساتھ مل کر لیا تھا۔ فری ایڈمنسٹریشن گورنمنٹ
کریڈیٹ۔ عدالتی قسم پولیس کے پاس ہے یا عدالت نے جو
ریگوری میں لکھے اور اس میں کرڈی کی اداری سے
رقم فراہم کی گئی جو عدالت سے تصدیق سے
تھوٹ کا ملکہ ہے۔ چونکہ گرفتاری کے وقت بیمار
تھے افراد اور رشتہ دار موجود تھے۔ مجھے عالی
صافہ کارڈی میں بھیجا کر لے جایا گیا۔
میں عدالتی پولیس کے پاس نے میری گرفتاری میں
آئے ہیں کے قریب لیٹول کے ساتھ بیان کیا ہے۔
544 ایجوکیشن نے میرے والدین پر ناجائز دباؤ
ڈال کر اس کو سنیں دھکا 145۔


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of original


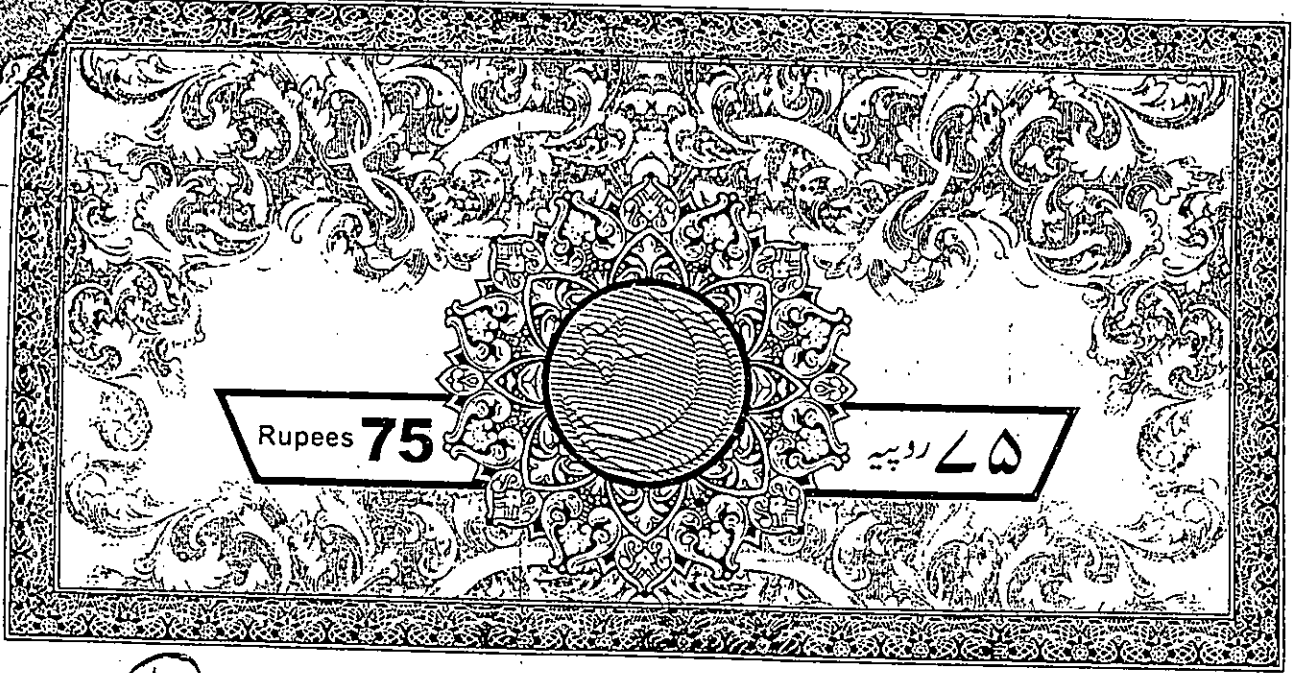
اور مجھے مارا پیٹا اور میری ہی خون کے زریعے میرے والدین کو ڈرایا دھمکایا۔ کہ رقم اور لیتوں کا بندوبست کر دو۔
دوسرے سب تمنا کر گھرا دربار چھایا جا رہے عزتی کر رہے اور گھوکا سا سامان اٹھائے رکھا ہے اس نے۔ تو وہ

جیور سوئی ہو گئی کہ رقم دی
اب جو نام لکھی ہو وہ پورا پورا علم ہوا۔ اور اس بات پر مطمئن ہوئے۔ کہ حساب اللہ ہے گناہ ہے۔ اور عدالت کو کھنکھار دیا
گھبراہٹ سے عاصیہ سن کر سڑکیں پیر جال
میرے حضور و قاصد

۵۶
المرقوم 29/2018

الغالبہ
آپ کا والد اور حساب اللہ فر 52 کنٹینر ڈلا ہوا

attested to be true copy




EXDA

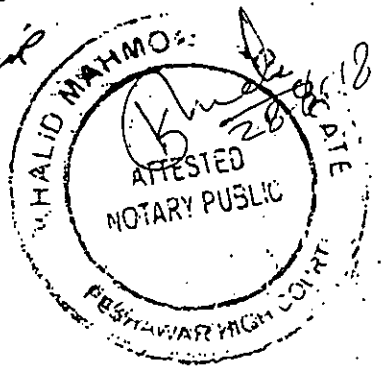
ASJ Ahmadia
 date 29/6/18
 27/12/17
 15/11/17

attested to be true copy of original

ماہنامہ اور فواد علی دہ خود نقل مان جانے جارہے ہیں اور یہ سب کوئی اور نہیں ہے۔
 دہ سب کوئی اور نہیں ہے۔
 یہ سب کوئی اور نہیں ہے۔
 یہ سب کوئی اور نہیں ہے۔

ATTESTED

(Examined)
 Session Court Peshawar



Signature

Signature

IN THE COURT OF MUHAMMAD SAEED AMJAD
ADDITIONAL SESSIONS JUDGE-XI, PESHAWAR

Bail petition No. 2296 /BA of 2018

"Misbah Ullah vs the State"

Or _____
04.07.2018

Present; APP for the State and learned counsel for the accused/petitioner. Complainant Fawad Ali & PW Shahab ud Din present in person. Record is available in connected case, titled "Sher Ali vs the State"

2. The accused / petitioner Misbah Ullah son of Niaz Muhammad seeks his post arrest bail in case FIR No: 911 dated 27.12.2017 u/s 15 AA/412 PPC / 17 (3) Haraba PS Gul Bahar, Peshawar.

3. Arguments heard and record gone through.

4. Perusal of record reveals that the previously bail petition of the accused / petitioner in the instant has been dismissed on merits by this court vide order dated 05.05.2018. Now the accused / petitioner has applied for his post arrest bail on the basis of compromise. Today at the very outset, complainant namely Fawad Ali son of Khuna Gul & PW Shahab ud Din appeared before the court and stated at the bar that they have effected genuine compromise with the accused / petitioner. To this effect their joint statement recorded before the court wherein they stated that the accused /

ATTESTED
05 JULY 2018
(Signature)
Sessions Court Peshawar

petitioner has satisfied them regarding his innocence and they do not want to charge the accused / petitioner in the instant case furthermore. They have got no objection on his release on bail. In this regard they have also produced written affidavit Ex PA, which is placed on file.

5. Although, the offence for which the accused/petitioner has been charged is non-compoundable in nature, however, it is settled by the Superior court that bail can be granted even in non-compoundable offences on the basis of compromise. In this regard guidance is being taken from 1999 P Cr.L.J 1107 [Lahor], 2010 P Cr.LJ 1482 [Lahor], wherein it has been held that **judicial notice of compromise in non-compoundable offences, not mentioned in section 345 (1) Cr.PC, can be taken and the same may be considered as a ground for grant of bail in the interest of justice and equity.** Reliance in this regard is also placed upon an unreported judgment of hon'ble Peshawar High Court, Peshawar in BA No. 849-P/2013 dated 11.07.2013, wherein his lordship has held as under.

Q

“If this is the position when the complainant and his witnesses have refused to charge the accused in any manner in the trial court, then

ATTESTED

05 JUL 2018

Seal of Peshawar

the other evidence including those of the police officials would not be sufficient to carry conviction on a capital charge”

Moreso, the grant of bail does not mean acquittal of accused it is merely handing over of accused to the hands of sureties who are duty bound to produce the accused on each and every date of hearing.

6. Resultantly, the instant petition is allowed and the accused/petitioner be released on bail on the sole ground of compromise, if he furnishes bail bonds in the sum of Rs.100,000/- (one lac only) with two sureties each in the like amount to the satisfaction of this court. Sureties must be local, reliable and men of means.

7. File be consigned to the record room after its completion.

Announced.
04.07.2018

Muhammad Saad Amjad
Additional Sessions Judge-XI,
Peshawar

CERTIFIED TO BE TRUE COPY

05 JUL 2018

(Examiner)
Copying Agency Session Court
Peshawar

No:	11065
Dated of Application	5-7-18
Name of Applicant	Adnan / Usic
Word	3200 P-8
Fee	Urgent/Fee
Signature of Copyist & Date	
Dated of Exam.	5-7-18
Date of Delivery	5-7-18

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHWAR

Service Appeal No. 1216/2018

Misbah Ullah..... (Appellant)

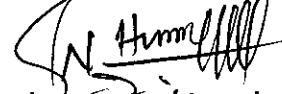
Versus

Provincial Police Officers & others.....(Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-Wise Comments	-	1-3
2.	Affidavit	-	4
3.	Copy of FIR	A	5
4.	Copy of order sheet in Bail petition	B	6

Respondents through



Inspector/ Legal,

CPO, Peshawar

0333-9594026

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1216 /2018.

Misbah Ullah(Appellant)

VERSUS

Inspector General of Police and others.....(Respondents)

SUBJECT: **COMMENTS ON BEHALF OF RESPONDENTS**

RESPECTIVELY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) The appeal is not based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for miss-joinder and non-joinder of necessary parties.
- d) The appellant is estopped to file the appeal by his own conduct.
- e) The appellant has not come to this Honorable Court with clean hands and involved himself in a criminal case vide FIR No. 911/2017 which is subjudice in the Competent Court of law.
- f) The appellant has got no cause of action to file present Service Appeal.

FACTS

1. Para No. 1 is admitted to the extent that the appellant was enlisted as Dirver Constable in Police Department however, the appellant being a member of disciplined Force involved himself in a criminal case vide FIR No. 911 dated 27.12.2017 u/s 17(3) Haraba, 412, 15-AA KP PS Gulbahar. (copy of FIR is annexed as "A")
2. Para No. 2 is denied and rebutted. Being the member of discipline Force, appellant involved himself in a criminal case mentioned above which tarnish the image of Police Force in general public. Moreover, the previous record of appellant with respect to his unblemished service record is subject to proof.
3. Para No. 3 is denied and rebutted. The appellant was charged by the complainant of aforementioned case in his statement recorded u/s 164 Crpc being involved in the commission of said offence. Furthermore, the appellant's previously bail petition was dismissed on merit by the Court of ASJ-XI, Peshawar on 05.05.2018. However, later on the appellant affected compromise with the complainant of the said criminal case through

bail petition No. 2296/ BA of 2018 dated 04.07.2018 thereby, meaning that compromise in criminal case admits to admission of guilt by the accused. (Copy of order sheet in bail petition No. 2296/ BA of 2018 is annexed as "B").

4. Correct, to the extent that after involvement of appellant in criminal case, the competent authority proceeded departmentally against the appellant by issuing proper charge sheet, statement of allegation and final show cause notice to which the appellant replied but the same was found un-satisfactory.
5. Para No. 5 is denied and rebutted. Proper departmental proceeding/ enquiry has been initiated against the appellant by constituting inquiry committee who after fulfilling all codal formalities by providing proper chance of personal hearing/ cross examination to the appellant was found guilty as appellant affected compromise with the complainant of above mentioned criminal case which meant that compromise in criminal cases admits to admission of guilt by the accused.
6. That the reply of appellant was found unsatisfactory thereby, his departmental appeal was dismissed by the appellant authority.
7. That being involved in criminal case, competent authority proceeded against appellant departmentally and the allegations/ charge sheet was proved against him during proceeding of departmental enquiry.

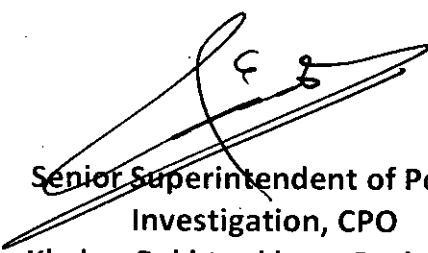
GROUND:-

- A. Incorrect. The act of answering respondents are quite legal and as per law / rules. The allegations/ charges leveled against the appellant were proved beyond any shadow of doubt during course of departmental enquiry.
- B. Incorrect. Proper departmental enquiry was initiated by constituting enquiry committee who after fulfilling all codal formalities finalized the enquiry proceeding by giving full opportunity of defence as well as cross examination to the appellant.
- C. Incorrect. The appellant has been given proper opportunity of cross examination of witness.
- D. Incorrect. The appellant's previously bail petition was dismissed on merit by the Court of ASJ-XI, Peshawar on 05.05.2018. However, later on the appellant affected compromise with the complainant of the said criminal case through bail petition No. 2296/ BA of 2018 dated 04.07.2018 thereby granted bail to the appellant. Furthermore, it is also pertinent to mention here that compromise in criminal case admit guilt of accused.


- E. As already explained in previous paras.
- F. Incorrect, hence rebutted. In-fact it is a well settled principle that criminal and departmental proceeding can run side by side.
- G. That the respondent may also be allowed to raise additional grounds at the time of arguments.

In view of the above, it is humbly prayed that on acceptance of Para-wise comments, the instant Service Appeal may kindly be dismissed being meritless.


Note: Appellant wrongly addressed respondent No. 05 in his Service Appeal as there is no post of DPO, Peshawar.



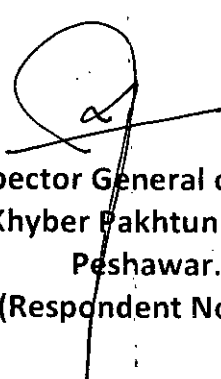
Senior Superintendent of Police,
Investigation, CPO
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 04)



Deputy Inspector General of Police,
Admin: Investigation,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)



Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)

BEFORE THE HONORABLE SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 1216/2018

Misbah Ullah..... (Appellant)

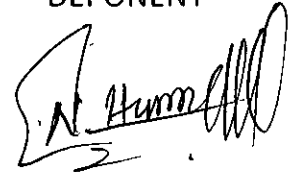
Versus

Provincial Police Officers & others.....(Respondents)

AFFIDAVIT

I, Naeem Hussain Inspector Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondents are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Court.

DEPONENT



NAEEM HUSSAIN
Inspector/ Legal
CPO, Peshawar.
16101-8646336-1

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردستی ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع پشاور

تاریخ وقت وقوع 27/12/017 وقت 18:20 بجے

گلبہار
نمبر 911

تاریخ وقت رپورٹ	27/12/017 وقت 18:50 بجے چاکیدگی پرچہ 19:20 بجے
نام و سکونت اطلاع دہندہ مستغیث	نواد علی ولد خونہ گل ساکن چارباغ جان آباد ضلع سوات
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	AA-15، 412، (3) 717 راجہ
جائے وقوعہ فاصلہ تھانہ سے اور سمت	جی ٹی روڈ نزد اور سڈیل حاجی کمپ
نام و سکونت ملزم	آدمہ تحریری مراسلہ پر مقدمہ درج رجسٹر یہ جاتا ہے
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو	بطور پیش رپورٹ
تھانہ سے روانگی کی تاریخ و وقت	

(ابتدائی اطلاع نیچے درج کرد)

بوقت صدر بجے ایک تحریری مراسلہ منجانب عبداللہ جان SI آن ڈیوٹی موبائل آفیسر بدست کنشیل ساجد 2611 موصول ہو کر بمضمون ذیل ہے، بخدمت آفیسر انچارج تھانہ گلبہار بدوران گشت حسب اطلاع جانے وقوعہ بالا آکوموٹیو پر مسمی نواد علی ولد خونہ گل قوم وردک بمر 23 سال ساکن جان آباد چارباغ ضلع سوات موجود پاکیوں رپورٹ کرتا ہے کہ میں میرا ہی شہاب الدین ولد سید انور سید ساکن شیخوڑی منگور سوات خاستہ خان اینڈ اکرام کرنسی ایکسچینج منگورہ سوات میں ملازم ہیں آج بوقت فریب 13:30 بجے منگورہ سوات سے مختلف غیر ملکی کرنسی پشاور چوک یادگار لاکر خانے صرف کیا دکان میں پاکستانی روپوں میں تبدیل کر کے جو مبلغ -/9628165 روپے بنے رقم کو دو بیگوں میں ڈال کر ایک بیگ میں نے اور دوسرا بیگ میرا ہی شہاب الدین نے اٹھا کر اشرف روڈس فرودس سینما کو پہنچے اور وہاں سے -/100 روپے کرایہ بذریعہ رکشہ میں بیٹھ کر حاجی کمپ اڈہ کیلئے روانہ ہوئی بوقت وقوعہ جانے وقوعہ بالا پر پہنچے تو اس دوران تین موٹر سائیکل پر چھ کسان آکر جن میں سے دو اشخاص آگے آکر ہم دونوں پر پستول ایم کر کے میرا ہی شہاب الدین سے رقم کا بیگ چھین لیا جبکہ دوسرے نے مجھ سے رقم کا بیگ چھین لیا میرے مزاحمت پر ایک نے مجھ پر پستول کی بٹ سے وار کر کے جس سے میں سر پر لگ کر زخمی ہوا اور

attached to be
copy of original

IN THE COURT OF MUHAMMAD SAEED AMJAD
ADDITIONAL SESSIONS JUDGE-XI, PESHAWAR

Bail petition No. 2296 /BA of 2018

"Misbah Ullah vs the State"

Or _____
04.07.2018

Present; APP for the State and learned counsel for the accused/petitioner. Complainant Fawad Ali & PW Shahab ud Din present in person. Record is available in connected case, titled "Sher Ali vs the State"

2. The accused / petitioner Misbah Ullah son of Niaz Muhammad seeks his post arrest bail in case FIR No. 911 dated 27.12.2017 u/s 15 AA/412 PPC / 17 (3) Haraba PS Gul Bahar, Peshawar.

3. Arguments heard and record gone through.

4. Perusal of record reveals that the previously bail petition of the accused / petitioner in the instant has been dismissed on merits by this court vide order dated 05.05.2018. Now the accused / petitioner has applied for his post arrest bail on the basis of compromise. Today at the very outset, complainant namely Fawad Ali son of Khuna Gul & PW Shahab ud Din appeared before the court and stated at the bar that they have effected genuine compromise with the accused / petitioner. To this effect their joint statement recorded before the court wherein they stated that the accused /

ATTESTED
05 JULY 2018
(Signature)
Sessions Court Peshawar

petitioner has satisfied them regarding his innocence and they do not want to charge the accused / petitioner in the instant case furthermore. They have got no objection on his release on bail. In this regard they have also produced written affidavit Ex PA, which is placed on file.

5. Although, the offence for which the accused/petitioner has been charged is non-compoundable in nature, however, it is settled by the Superior court that bail can be granted even in non-compoundable offences on the basis of compromise. In this regard guidance is being taken from 1999 P Cr.LJ 1107 [Lahor], 2010 P Cr.LJ 1482 [Lahor], wherein it has been held that judicial notice of compromise in non-compoundable offences, not mentioned in section 345 (1) Cr.PC, can be taken and the same may be considered as a ground for grant of bail in the interest of justice and equity. Reliance in this regard is also placed upon an unreported judgment of hon'ble Peshawar High Court, Peshawar in BA No. 849-P/2013 dated 11.07.2013, wherein his lordship has held as under.

Q

"If this is the position when the complainant and his witnesses have refused to charge the accused in any manner in the trial court, then

ATTESTED
05 JUL 2013
Peshawar

the other evidence including those of the police officials would not be sufficient to carry conviction on a capital charge"

Moreover, the grant of bail does not mean acquittal of accused it is merely handing over of accused to the hands of sureties who are duty bound to produce the accused on each and every date of hearing.

6. Resultantly, the instant petition is allowed and the accused petitioner be released on bail on the sole ground of compromise, if he furnishes bail bonds in the sum of Rs.100,000/- (one lac only) with two sureties each in the like amount to the satisfaction of this court. Sureties must be local, reliable and men of means.

7. File be consigned to the record room after its completion.

Announced.
04.07.2018

Muhammad Saad Amjad
Additional Sessions Judge-XI,
Peshawar

CERTIFIED TO BE TRUE COPY

05 JUL 2018

(Examiner)
Copying Agency Session Court
Peshawar

No:	11065
Dated of Application	5-7-18
Name of Applicant	Adnan Hussain
Word	3200 P-8
Fee	Stamp Fee
Signature of Applicant & Date	
Dated of Presentation	5-7-18
Date of Delivery	5-7-18

50	50719	RBA	پشاور بار ایسوسی ایشن	QR Code
ایڈویکٹ: <u>الہیر حسین</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>be-10-9702</u>				
رابطہ نمبر: <u>03339370534</u>				

بعدالت جناب: سرمد حسین بٹ (RPK)

مخانب: <u>صباح اللہ دیوبند</u>	دعویٰ: <u>باجا علی سرمد</u>
<u>صباح اللہ بنام</u>	علت نمبر:
<u>وعدہ</u>	مورخہ:
	جرم:
	تھانہ:

بابت تحریر آتہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام الہیر حسین کیلئے الہیر حسین کے لئے الہیر حسین کو ذیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 28/9/2018




المقام: پشاور

Handwritten signature

صباح اللہ دیوبند نے الہیر حسین کو اختیار دیا ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

28/9/2018
Handwritten signature

قیمت 50 روپے	44158			
ایڈوکیٹ: <u>سجاد علی</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>5c11-1555</u>				
رابطہ نمبر: <u>03005894386</u>				

بعدالت جناب: مخدوم سجاد علی

مخائب: <u>اسرار علی</u>	دعویٰ:
موضوع: <u>محبہ اللہ</u>	علت نمبر:
بنام:	مورخہ:
<u>آئی جی پولیس</u>	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی کو جواب دہی کارروائی متعلقہ
 آن مقام سجاد علی نے سجاد علی کو کوویل منظور
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 31/3/20

مقام سجاد علی واہ شد العبد

نوٹ: اس وکالت نامہ کی فوٹوکاپی ناقابل قبول ہوگی۔

محبہ اللہ

Service Appeal No. 1216/2018

03.09.2020

Appellant has not forth come at the moment 3:15 P.M nor anyone else representing him has appeared on his behalf. Mr. Usman Ghani, District Attorney alongwith representative of the department Mr. Umer Sher, Inspector (Legal) are also present.

Since the instant appeal was adjourned twice due to spread of pandemic COVID-19, therefore, it is deemed appropriate to issue notice to appellant as well as his counsel, therefore, process be issued accordingly and file to come up for arguments on 13.11.2020 before D.B.

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

13.11.2020

Appellant in person present.

Muhammad Jan learned Deputy District Attorney alongwith Muhammad Asif ASI for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 22.01.2021 for arguments, before D.B.

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No. 1216/18

Misbah Ullah

Versus

Inspector General of Police & Others

INDEX

S#	Description of Documents	Annexures	Page Nos
1	Copy of FIR	A	8
2	Copy of the Final Show-cause Notice, statement of allegation & Charge-sheet & reply	"B" "C" & "D" "D1"	9, 10, 11 12
3	Impugned Order Departmental Appeal	"E" & "E1"	13, 14 15-16
4	Copy of the statement of the complainant	"F"	17
5	Other Documents & Copy of Bail Order	"G"	18-20
6	Wakalat Nama		

Dated: 28/09/2018

Appellant
Through

Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Misbah Ullah S/o Niaz Muhammad Ex- Driver
Constable No. 52 R/o Badezai P.O Nasir Bagh,
PeshawarAppellant.

Versus

1. Inspector General of Police Khyber Pakhtunkhwa
Peshawar. CPO Peshawar.
2. Additional I.G Investigation KPK Peshawar.
3. D.I.G Investigation/ Admin CPO KP Peshawar.
CPO Peshawar. *HEADQUARTER*
4. Senior Superintendent of Police Investigation Unit
CPO Peshawar.
5. District Police Officer Peshawar.

.....Respondents

APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED ORDER DATED 30-05-2018
VIDE ANNEXURE 'A' WHEREBY THE
APPELLANT HAS BEEN TERMINATED
FROM HIS SERVICE.

PRAYER,

ON ACCEPTANCE OF THE APPEAL, THE
IMPUGNED ORDER DATED 30/05/2018 AT
ANNEXURE 'E' MAY BE SET ASIDE AND
THE APPELLANT MAY BE REINSTATED IN
SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth:-

*Brief facts leading to the instant appeal are as
under:-*

1. That the appellant was serving as a Driver / Constable in Peshawar with the respondents.
2. That the appellant served the department with the honesty and the entire satisfaction of the respondents and has 9 years of unblemished record on the service on his part.
3. That during performance of the duties, the appellant was implicated in a false case and resultantly was arrested on the basis of concocted FIR. (Copy of FIR is attached as annexure "A").
4. That on the basis of the said FIR, the petitioner/ appellant was served with a show-cause notice alongwith the statement of allegation and charge-sheet which was replied and denied by the appellant. (Copy of the Final Show-cause Notice, statement of allegation & Charge-sheet and *reply* attached as annexure "B" "C" & "D" **D1**
5. That on the basis of the Final Show-cause notice, handed over to the Petitioner/ Appellant consequently without any giving chance of hearing and providing any opportunity of defense and

3

cross-examining the witness the 30/05/2018 order was passed and the services of the Appellant/ Petitioner were terminated. (Copy of impugned order is annexure ⁶³ E)

6. That the appellant filed a departmental appeal against the said dismissal order on 29/06/2018 but the respondent has put diff ear to the said. (Copy of the Departmental Appeal is attached as annexure ~~E~~ E1

7. That the appellant feeling aggrieved from the impugned order and without any fruit of the departmental appeal, now filed the instant appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:

A. That the impugned order passed by the respondent is against law, facts & principle of natural justice, hence not tenable in the eyes of law.

B. That no regular formal inquiry was conducted nor did the appellant was associated with any sort of

inquiry which turned the whole proceedings illegal.

C. That no witness was examined in the presence of the appellant nor has any opportunity been awarded for cross-examining the same.

D. That the appellant is on bail and the case has not been yet decided by the learned Trial Court in order to thrashed out the real truth after completing all the cordal formalities and record the statements of the witness in support of the alleged FIR and allegation against the appellant.

E. That the complainant of the FIR has already submitted before the Hon'ble Trial Court that he has merely charged the appellant on the basis of suspicion and by now on his satisfaction, he has no plan or grievance and categorically stated before the Hon'ble Court that his this statement is true and voluntary and without any coercion and if the Hon'ble Court even acquit the present appellant out of the criminal charges, he would be having no excuse. (Copy of the statement of the complainant is attached as annexure "F").

F. That the impugned order on the basis of alleged FIR is in fact a pre-trial conviction which is not tenable in the eyes of law.

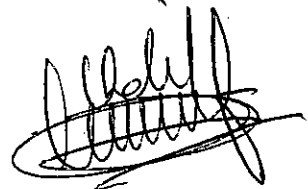
G. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

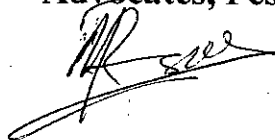
It is, therefore, prayed that on acceptance of this appeal, the impugned order dated 30/05/2018 may be set aside and the appellant may be reinstated in service with all back benefits to meet the ends of justice.

Dated: 28/09/2018


Appellant

Through


Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar.



(65)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

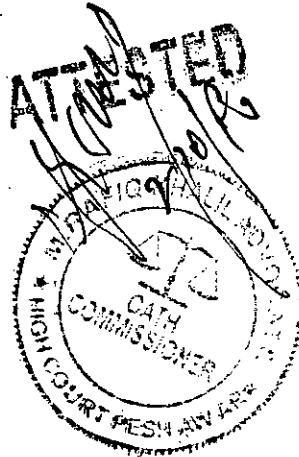
Misbah Ullah

Versus

Inspector General of Police & Others

Affidavit

I, Misbah Ullah S/o Niaz Muhammad Ex- Driver Constable No. 52 R/o Badezai P.O Nasir Bagh, Peshawar, do hereby solemnly affirm and state on oath that the departmental appeal has never been returned to me with direction to approach the proper forum. My above statement is true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



Deponent

Misbah

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Misbah Ullah

Versus

Inspector General of Police & Others

ADDRESSES OF PARTIES

APPELLANT.

Misbah Ullah S/o Niaz Muhammad Ex- Driver
Constable No. 52 R/o Badezai P.O Nasir Bagh,
Peshawar

RESPONDENTS:

1. Inspector General of Police Khyber Pakhtunkhwa
Peshawar. CPO Peshawar.
2. Additional I.G Investigation KPK Peshawar.
3. D.I.G Investigation/ Admin CPO.KP Peshawar.
CPO Peshawar.
4. Senior Superintendent of Police Investigation Unit
CPO Peshawar.
5. District Police Officer Peshawar.

Dated: 28/09/2018

Appellant

Through

**Akbar Yousaf Khalil
Muhammad Ayaz Khan
&
Amir Zaib Mughal
Advocates, Peshawar.**

(Better Copy)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع پشاور

تاریخ وقت وقوعہ 27/12/017 وقت 18:20 بجے

تھانہ: گلہار

علاقت نمبر 911

تاریخ وقت رپورٹ	27/12/017 وقت 18:50 بجے چاکیدگی پرچہ 19:20 بجے
نام و سکونت اطلاع دہندہ مستغیث	فواد علی ولد خونہ گل ساکن چارباغ جان آباد ضلع سوات
مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو	AA-15، 412، (3) 17 حرابہ
جائے وقوعہ فاصلہ تھانہ سے اور سمت	جی ٹی روڈ نزد اور سڈ پل حاجی کمپ
نام و سکونت ملزم	آدہ تحریری مراسلہ پر مقدمہ درج رجسٹر کیا جاتا ہے
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو	بطور پیش رپورٹ
تھانہ سے روانگی کی تاریخ و وقت	

(ابتدائی اطلاع نیچے درج کرو)

بوقت صدر بجے ایک تحریری مراسلہ منجانب عبداللہ جان SI آن ڈیوٹی موبائل آفیسر بدست کنشیل ساجد 2611 موصول ہو کر بمضمون ذیل ہے، بخدمت آفیسر انچارج تھانہ گلہار بدوران گشت حسب اطلاع جائے وقوعہ بالا آکر موقع پر مسمی فواد علی ولد خونہ گل قوم وردک بمر 23 سال ساکن جان آباد چارباغ ضلع سوات موجود پا کر یوں رپورٹ کرتا ہے کہ میں معہ ہمراہی شہاب الدین ولد سید انور سید ساکن شیخو ذی منگلور سوات خاستہ خان اینڈ اکرام کرنسی آپیکس منگلورہ سوات میں ملازم ہیں آج بوقت فریب 13:30 بجے منگلورہ سوات سے مختلف غیر ملکی کرنسی پشاور چوک یادگار لاکر خانے صراف کیا دکان میں پاکستانی روپوں میں تبدیل کر کے جو مبلغ -/9628165 روپے بنے رقم کو دو بیگوں میں ڈال کر ایک بیگ میں نے اور دوسرا بیگ ہمراہی شہاب الدین نے اٹھا کر اشرف روڈس فردوس سینما کو پہنچے اور وہاں سے -/100 روپے کرایہ بذریعہ رکشہ میں بیٹھ کر حاجی کمپ اڈہ کیلئے روانہ ہوئی بوقت وقوعہ جائے وقوعہ بالا پر پہنچے تو اس دوران تین موٹر سائیکل پر چھ کسان آکر جن میں سے دو اشخاص آگے آکر ہم دونوں پر پستول ایم کر کے ہمراہی شہاب الدین سے رقم کا بیگ چھین لیا جبکہ دوسرے نے مجھ سے رقم کا بیگ چھین لیا میرے مزاحمت پر ایک نے مجھ پر پستول کی بٹ سے وارز کر کے جس سے میں سر پر لگ کر زخمی ہوا اور

attached to be
true copy of original

FINAL SHOW CAUSE NOTICE

WHEREAS, you, Driver/Constable Misbahullah No. 52 while posted in MT Staff, Investigation Branch CPO, Peshawar committed gross misconduct, as defined in Rule 3 of Police Rules 1975 that "Peshawar as follows:-

"That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghieb Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/412-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab--ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching more than Nine Million rupees from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 16,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zxmc0 (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you were sent to the Central Jail Peshawar"

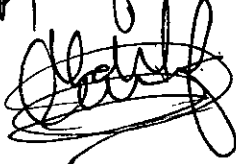
Resultantly you were issued charge sheet with summary of allegations. Enquiry Committee consisting of DSP Fazle Maula and Inspector Sayar Khan of Investigation Branch CPO was constituted to enquire into the matter.


WHEREAS, the Enquiry Officer finalized the enquiry proceeding by giving you full opportunity of defence as well as cross examination and the statements of all PWs have been recorded. Consequent upon completion of enquiry proceedings, the Enquiry Committee in its findings reported that according to CDR you had been in contact with your co-accused on the day of occurrence and that all of you (charged accused) belong to an organized criminal gang. Furthermore out of the snatched amount, sixteen Lakh rupees have been recovered from your house at your pointation. The available evidence confirmed your involvement in the crime as stated above. The Enquiry Committee held you guilty of the charges and described you as stigma on the forehead of the Police department.

AND WHEREAS, on going through the Findings and recommendation of the Enquiry Committee, material placed on record and other connected papers including your defence before the Enquiry Committee, I am satisfied that you have committed the misconduct and are guilty of the charges levelled against you as per statement of allegations already conveyed to you which stands proved and render you liable to be awarded punishment under the said Rules.

NOW THEREFORE, I, Muhammad Nawaz SSP/Investigation CPO Peshawar competent authority have tentatively decided to impose major penalty upon you, as defined in the said Rule.

You, are, therefore, required to submit reply to this Show Cause Notice within Seven days of the receipt of this notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defence to offer and an exparte action shall be taken against you. In the meantime also intimate as to whether you desire to be heard in person or otherwise.

attested to be true
copy of original



(MUHAMMAD NAWAZ)
Senior Superintendent of Police,
Investigation Branch KP
Peshawar

DISCIPLINARY ACTION

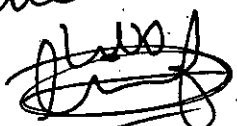
I, Muhammad Nawaz SSP/Investigation, CPO Peshawar being competent authority am of the opinion that you Driver/Constable Mishahullah No. 52 of Investigation Unit CPO have rendered yourself liable to be proceeded against departmentally, as you have committed the following acts of omissions/commissions within the meaning of Rule-3 of Police Rules 1975.


STATEMENT OF ALLEGATIONS

" That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghil Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/412-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab--ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching Rs. 96, 28, 156/- from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 15,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/726A Zocco (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you have been admitted to the Central Jail Peshawar"

For the purpose of scrutinizing the conduct of the said official with reference to above allegations, an Enquiry Committee comprising of Mr. Fazal Maula DSP/Investigation and Inspector Sayar Khan of Investigation Branch CPO is hereby constituted in the matter under Rule-5 of the said Rules.

The Enquiry Committee shall, in accordance with the provisions of said Rules, provide reasonable opportunity of hearing to the accused official, record and submit its finding within 10-days of the receipt of this order and his recommendations as to punishment or other appropriate action against the accused official.

Attended to be true copy



 (MUHAMMAD NAWAZ)
 Senior Superintendent Police,
 Investigation CPO KP,
 Peshawar

CHARGE SHEET

I, Muhammad Nawaz SSP/Investigation, CPO Peshawar being competent authority, hereby charge you Driver/Constable Misbahullah No. 52 of Investigation Unit CPO, Peshawar as follows:-

"That you were marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghieb Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that you alongwith six other co-accused persons were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17 (3) Haraba/15-AA/112-PPC PS Gulbahar, CCP Peshawar and that complainants Fawad Ali & Shahab--ud-Din in their statements u/s 164-Cr.PC charged you alongwith other six accused persons for snatching Rs. 96, 28, 156/- from them on gun point. According to the CDR you had been in contact with your charged co-accused persons and that out of the snatched amount, Rs. 15,00,000/-, one 30-bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zinco (stated to be owned by one of the accused namely Noor Khan) were recovered from your house. You also admitted your guilt in the statement recorded u/s 161-Cr.PC and after interrogation you have been admitted to the Central Jail Peshawar"

By reasons of the above, you appear to be guilty of misconduct under Rule-3 of Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

You are therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer (s)/Committee, as the case may be.

Your written defence if any should reach the Enquiry Officer (s)/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex parte action shall be taken against you.

Intimate whether you desire to be heard in person or otherwise.

A statement of allegations is enclosed.

No. 62/PA-SSP/inv CP
DT 09-04-2018

Attested to be true copy
[Signature]

[Signature]
(MUHAMMAD NAWAZ)
Senior Superintendent Police,
Investigation CPO KP,
Peshawar

6

مان عالی

کوئٹہ چارڈ مشرف / سیکریٹری آف پولیس / قائد دفتر /

62/100 مورخہ 9/4/2018ء حضور میں ہوا، کہ جو 24/2018ء کی رات

تقریباً 3 بجے رات بغیر کسی اطلاع / CTD پولیس چارج گھر

میں داخل ہوئے اور مجھے ملکر دفتر روت لایا جہاں میرے گھر

کمان کو برقی میں ڈال کر میرے پر قسم کی تشدد کی گئی۔ اور

مجھے قبور کھنڈا کر کے میں جہم مان لوں۔ جب مجھ پر میرے قسم

کا ظلم ڈھایا گیا۔ میں نے مزید تعلق اور تشدد کی وجہ

انہوں نے جان بچانے کی خاطر میں نے پولیس کو بیان دینے کا

تصمیم لیا۔ مورخہ 24/4/2018ء کو مجھے تھانہ ملکیار کے پولیس کو کوالیٹا گیا

اور 6 یوم کا رہنا پڑا حاصل گیا۔ تھانہ ملکیار کے تصدیق

انہوں نے مجھے بیان اور سے دینے کے لئے تشدد اور کھائی

مشروع کی۔ اور میں نے ساقبت کو میرے والدین کو دھکی

دیا۔ کہ ایک عدد لیٹل لیدر 000000 لے کر تھانہ لے آئیں ورنہ

پتھر پھینکے گا اور آئیں گے۔ میں حاضر بیان

کریا ہوا۔ کہ مجھ سے ایک سب اور کسی اور قسم کی رہنمائی

میں ہوئی ہے۔ اور نہ میں نے بد و اچھ سے کیا ہے۔

attested to be true copy

Attested DSP/Ad

دین گواہان کو پیش کرنے کو تیار ہوں۔

چونکہ مقدمہ باحال فریم تفتیش اور عدالت میں فریم کی جو کچھ ہے

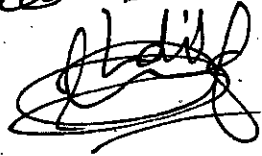
کچھ دستاویزات ہیں جن سے صدف انکوائری

تفتیش مقدمہ فریم تک جا کر حال کرنے کا صحیح ہے۔
فریم

23-4-2018

صاف حساب لکھ کر ڈاؤن لوڈ کروا کر 52

attached to be true copy



ORDER

This order will dispose off the departmental enquiry against Driver/Constab Misbahullah No. 52 of Investigation Branch CPO Peshawar who was proceeded against departmentally on the following charges: -

"That he was marked absent vide daily diary No. 04 dated 23.03.2018 PS Investigation (CB) and Inspector Raghob Khan of Investigation Branch CPO was deputed to hold preliminary enquiry, who on 05.04.2018 submitted report that Driver/Constable Misbahullah No. 52 alongwith six other co-accused person were involved in a robbery case vide FIR No. 911 dated 27.12.2017 u/s 17-(3) Haraba/15-AA/412-PPC P.S Gulbahar, CCP Peshawar and that complainant Fawad Ali & Shahab-ud-din in their statement u/s 164 CrPC charged the above named official alongwith other six accused persons for snatching more than Nine Million rupees from them on gun point. According to the CDR Driver/Constable Misbahullah No. 52 had been in contact with charged co-accused persons and that out of the snatched amount, Rs. 16,00,000/-, one 30 bore pistol No. 7610 with five rounds in its chamber (weapon of offence) and a motorcycle No. FE/7264 Zxmco (stated to be owned by one of the accused namely Noor Khan) were recovered from his house at his pointation. He also admitted his guilt in the statement recorded u/s 161 CrPC and after interrogation he was sent to the Central Jail Peshawar."

Resultantly the accused Driver/Constable was placed under suspension and he was issued Charge Sheet with Summary of allegations. Enquiry Committee consisting of DSP Fazal-e-Maula and Inspector Sayar Khan of Investigation Branch CPO was constituted to inquire into the matter.

The Enquiry Committee finalized the enquiry proceeding by giving him full opportunity of defence as well as cross examination and the statement of all PWs were recorded. Consequent upon completion of enquiry proceedings, the Enquiry Committee in its findings reported that according to CDR the accused official had been in contact with his co-accused persons on the day of occurrence and that all of them (charge accused persons) belong to an organized criminal gang. Furthermore out of the snatched amount, sixteen Lakh rupees alongwith weapon of offence i.e. 30 bore pistol and motorcycle (used in the commission of offence) have been recovered from his house at his pointation.

*attested to be
true copy
[Signature]*

(U4)

The accused official was served with Final Show Cause Notice to which he replied. His reply to the FSCN has perused and found unsatisfactory. The undersigned personally given him an opportunity of personal hearing in the Central Jail Peshawar where he was cross questioned but again failed producing cogent reason in self defence.

After going through the case file and available evidence on the record I, the undersigned reached to the conclusion that accused Driver/Constable Misbahulla No. 52 is involved in the above mentioned case. During the course of enquiry as we as cross examination, he failed to produce any cogent any evidence in his support and also failed to give a plausible answers to the cross questions. Being involved in dacoity case and also a member of an organized Gang, he had brought bad name for the department. He is stigma on the forehead of Police Department and his retention in the department will never be beneficial for a disciplined Force.

Keeping in view the above, I, the undersigned, hereby dismissed him from the service under Police Rules 1975 (Amended 2014 K.P Police E&D Rules 2014), with immediate effect from the date of absence i.e 23.03.2018.


Order announced.

M. Nawaz
(MUHAMMAD NAWAZ)
Senior Superintendent of Police
Investigation Unit, CPO Peshawar.

No. 5881-86 EC/Inv: dated Peshawar, the 30 / 5 / 2018.

Copy of above is forwarded for f/o information and n/action to the :-

1. Addl:IGP Investigation KP Peshawar.
2. DIG Investigation/Admn: CPO K.P Peshawar.
3. DSP Admn: Inv:.
4. Accountant Inv:
5. MTO Investigation.
6. Official concerned.

*attested to be true copy
of original*



اور مجھے مارا پیٹا اور میری ہی فون سے زریحہ صاحبہ کے والدین کو
 ڈرایا ڈھمکایا۔ کہ رقعہ اور لپٹوں کا مندرجہ شدہ مفاد
 درجہ سے بھاری بھاری دیکھو جیسا جا رہے ہیں عزیزی کر رہے
 اور گھوٹا سا سا مان رکھا رکھا ہے اس نے۔ تو وہ
 بیوقوفوں کو رقم دی

اب چونکہ مدعی خود پورا پورا علم ہوا۔ اور اس بات پر مطمئن
 ہوئے۔ کہ دعویٰ اللہ کے ساتھ ہے۔ اور عدالت کو متاثر دیا

لے لے کر دست بردار ہوئے۔ اس کو سر میں پیر جیال
 کر کے شکر و ناصیب

۵۶
 المرقوم 29/1/2018

لاہور
 ان کا والد صاحب اللہ فر 52 کسٹڈ لیا ہوا

attested to be true copy


IN THE COURT OF MUHAMMAD SAEED AMJAD
ADDITIONAL SESSIONS JUDGE-XI, PESHAWAR

Bail petition No. 2296 /BA of 2018

"Misbah Ullah vs the State"

Or _____
04.07.2018

Present; APP for the State and learned counsel for the accused/petitioner. Complainant Fawad Ali & PW Shahab ud Din present in person. Record is available in connected case, titled "Sher Ali vs the State"

2. The accused / petitioner Misbah Ullah son of Niaz Muhammad seeks his post arrest bail in case FIR No: 911 dated 27.12.2017 u/s 15 AA/412 PPC / 17 (3) Haraba PS Gul Bahar, Peshawar.

3. Arguments heard and record gone through.

4. Perusal of record reveals that the previously bail petition of the accused / petitioner in the instant has been dismissed on merits by this court vide order dated 05.05.2018. Now the accused / petitioner has applied for his post arrest bail on the basis of compromise. Today at the very outset, complainant namely Fawad Ali son of Khuna Gul & PW Shahab ud Din appeared before the court and stated at the bar that they have effected genuine compromise with the accused / petitioner. To this effect their joint statement recorded before the court wherein they stated that the accused /

ATTESTED

05 JUL 2018

(Examiner)
Sessions Court Peshawar

petitioner has satisfied them regarding his innocence and they do not want to charge the accused / petitioner in the instant case furthermore. They have got no objection on his release on bail. In this regard they have also produced written affidavit Ex PA, which is placed on file.

5. Although, the offence for which the accused/petitioner has been charged is non-compoundable in nature, however, it is settled by the Superior court that bail can be granted even in non-compoundable offences on the basis of compromise. In this regard guidance is being taken from 1999 P. Cr.L.J 1107 [Lahor], 2010 PCr.LJ 1482 [Lahor], wherein it has been held that judicial notice of compromise in non-compoundable offences, not mentioned in section 345 (1) Cr.PC, can be taken and the same may be considered as a ground for grant of bail in the interest of justice and equity. Reliance in this regard is also placed upon an unreported judgment of hon'ble Peshawar High Court, Peshawar in BA No. 849-P/2013 dated 11.07.2013, wherein his lordship has held as under.

Q

“If this is the position when the complainant and his witnesses have refused to charge the accused in any manner in the trial court, then

ATTESTED
05 JUL 2018
Peshawar

the other evidence including those of the police officials would not be sufficient to carry conviction on a capital charge"

Moreso, the grant of bail does not mean acquittal of accused it is merely handing over of accused to the hands of sureties who are duty bound to produce the accused on each and every date of hearing.

6. Resultantly, the instant petition is allowed and the accused/petitioner be released on bail on the sole ground of compromise, if he furnishes bail bonds in the sum of Rs.100,000/- (one lac only) with two sureties each in the like amount to the satisfaction of this court. Sureties must be local, reliable and men of means.

7. File be consigned to the record room after its completion.

Announced.
04.07.2018

Muhammad Saad Amjad
Additional Sessions Judge-XI,
Peshawar

CERTIFIED TO BE TRUE COPY

05 JUL 2018

(Examiner)
Copying Agency Session Court
Peshawar

No:	11065
Dated of Application	5-7-18
Name of Applicant	Adnan/Usuf
Word	3900 P-8
Fee	Urgent/Fee
Signature of Copyist & Date	
Dated of Preparation	5-7-18
Date of Delivery	5-7-18

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHWAR

Service Appeal No. 1216/2018

Misbah Ullah..... (Appellant)

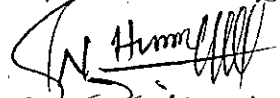
Versus

Provincial Police Officers & others.....(Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-Wise Comments	-	1-3
2.	Affidavit	-	4
3.	Copy of FIR	A	5
4.	Copy of order sheet in Bail petition	B	6

Respondents through



Inspector/ Legal,

CPO, Peshawar

0333-9594026

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1216 /2018.

Misbah Ullah(Appellant)

VERSUS

Inspector General of Police and others.....(Respondents)

SUBJECT: **COMMENTS ON BEHALF OF RESPONDENTS**

RESPECTIVELY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) The appeal is not based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for miss-joinder and non-joinder of necessary parties.
- d) The appellant is estopped to file the appeal by his own conduct.
- e) The appellant has not come to this Honorable Court with clean hands and involved himself in a criminal case vide FIR No. 911/2017 which is subjudice in the Competent Court of law.
- f) The appellant has got no cause of action to file present Service Appeal.

FACTS

1. Para No. 1 is admitted to the extent that the appellant was enlisted as Dirver Constable in Police Department however, the appellant being a member of disciplined Force involved himself in a criminal case vide FIR No. 911 dated 27.12.2017 u/s 17(3) Haraba, 412, 15-AA KP PS Gulbahar. (copy of FIR is annexed as "A")
2. Para No. 2 is denied and rebutted. Being the member of discipline Force, appellant involved himself in a criminal case mentioned above which tarnish the image of Police Force in general public. Moreover, the previous record of appellant with respect to his unblemished service record is subject to proof.
3. Para No. 3 is denied and rebutted. The appellant was charged by the complainant of aforementioned case in his statement recorded u/s 164 Crpc being involved in the commission of said offence. Furthermore, the appellant's previously bail petition was dismissed on merit by the Court of ASJ-XI, Peshawar on 05.05.2018. However, later on the appellant affected

bail petition No. 2296/ BA of 2018 dated 04.07.2018 thereby, meaning that compromise in criminal case admits to admission of guilt by the accused. (Copy of order sheet in bail petition No. 2296/ BA of 2018 is annexed as "B").

4. Correct, to the extent that after involvement of appellant in criminal case, the competent authority proceeded departmentally against the appellant by issuing proper charge sheet, statement of allegation and final show cause notice to which the appellant replied but the same was found un-satisfactory.
5. Para No. 5 is denied and rebutted. Proper departmental proceeding/ enquiry has been initiated against the appellant by constituting inquiry committee who after fulfilling all codal formalities by providing proper chance of personal hearing/ cross examination to the appellant was found guilty as appellant affected compromise with the complainant of above mentioned criminal case which meant that compromise in criminal cases admits to admission of guilt by the accused.
6. That the reply of appellant was found unsatisfactory thereby, his departmental appeal was dismissed by the appellant authority.
7. That being involved in criminal case, competent authority proceeded against appellant departmentally and the allegations/ charge sheet was proved against him during proceeding of departmental enquiry.

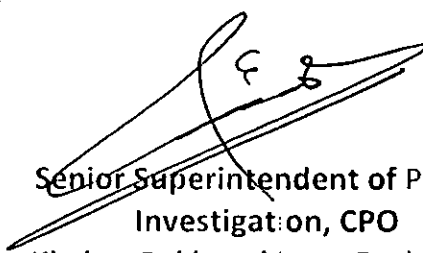
GROUNDS:-

- A. Incorrect. The act of answering respondents are quite legal and as per law / rules. The allegations/ charges leveled against the appellant were proved beyond any shadow of doubt during course of departmental enquiry.
- B. Incorrect. Proper departmental enquiry was initiated by constituting enquiry committee who after fulfilling all codal formalities finalized the enquiry proceeding by giving full opportunity of defence as well as cross examination to the appellant.
- C. Incorrect. The appellant has been given proper opportunity of cross examination of witness.
- D. Incorrect. The appellant's previously bail petition was dismissed on merit by the Court of ASJ-XI, Peshawar on 05.05.2018. However, later on the appellant affected compromise with the complainant of the said criminal case through bail petition No. 2296/ BA of 2018 dated 04.07.2018 thereby granted bail to the appellant. Furthermore, it is also pertinent to mention

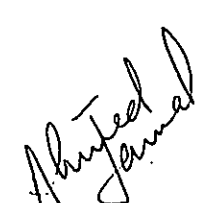
- E. As already explained in previous paras.
- F. Incorrect, hence rebutted. In-fact it is a well settled principle that criminal and departmental proceeding can run side by side.
- G. That the respondent may also be allowed to raise additional grounds at the time of arguments.

In view of the above, it is humbly prayed that on acceptance of Para-wise comments, the instant Service Appeal may kindly be dismissed being meritless.


Note: Appellant wrongly addressed respondent No. 05 in his Service Appeal as there is no post of DPO, Peshawar.



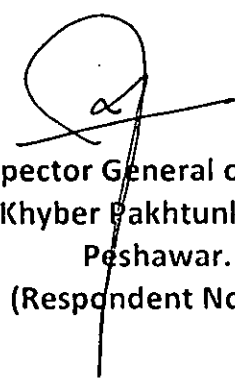
Senior Superintendent of Police,
Investigation, CPO
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 04)



Deputy Inspector General of Police,
Admin: Investigation,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)



Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ نو جداری

ضلع پشاور

تاریخ وقت وقوع 27/12/017 وقت 18:20 بجے

گلبہار

ت نمبر 911

تاریخ وقت رپورٹ	27/12/017 وقت 18:50 بجے چاکیدگی پرچہ 19:20 بجے
نام سکونت اطلاع دہندہ مستغنیث	نواد علی ولد خونہ گل ساکن چارباغ جان آباد ضلع سوات
مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو	AA-15, 412 (3) 17 راجہ
جائے وقوع ناصلا تھانہ سے اور سمت	جی ٹی روڈ نزد اور سڈ پل حاجی کب
نام سکونت ملزم	آمدہ تحریری مراسلہ پر مقدمہ درج رجسٹر کیا جا تا ہے
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وہ بیان کرو	بطور پیش رپورٹ
تھانہ سے روانگی کی تاریخ و وقت	

(ابتدائی اطلاع نیچے درج کرو)

بوقت صدر بجے ایک تحریری مراسلہ منجانب عبداللہ جان SI آن ڈیوٹی موبائل آفیسر بدست کنشیل ساجد 2611 موصول ہو کر بمضمون ذیل ہے، بخدمت آفیسر انچارج تھانہ گلبہار بدوران گشت حسب اطلاع جائے وقوعہ بالا آکاموٹو پر مسکی نواد علی ولد خونہ گل قوم وردک بھر 23 سال ساکن جان آباد چارباغ ضلع سوات موجود پاکریوں رپورٹ کرتا ہے کہ میں مہمراہی شہاب الدین ولد سید انور سید ساکن شیخوڑی منگلور سوات خائستہ خان اینڈ اکرام کرنسی ایجینسی منگلورہ سوات میں ملازم ہیں آج بوقت فریب 13:30 بجے منگلورہ سوات سے مختلف غیر ملکی کرنسی پشاور چوک یادگار لاکر خانے صراف کیا دکان میں پاکستانی روپوں میں تبدیل کر کے جو مبلغ -/9628165 روپے بے رقم کو دو بیگوں میں ڈال کر ایک بیگ میں نے اور دوسرا بیگ مہمراہی شہاب الدین نے اٹھا کر اشرف روڈس فردوس سنیما کو پہنچے اور وہاں سے -/100 روپے کرایہ بذریعہ رکتہ میں بیٹھ کر حاجی کب ایڈ کلبے روانہ ہو مجب بوقت وقوعہ جائے وقوعہ بالا پر پہنچے تو اس دوران تین موٹر سائیکل پر چھ کسان آ کر جن میں سے دو اشخاص آگے آ کر ہم دونوں پر پستول ایم کر کے مہمراہی شہاب الدین سے رقم کا بیگ چھین لیا جبکہ دوسرے نے مجھ سے رقم کا بیگ چھین لیا میرے مزاحمت پر ایک نے مجھ پر پستول کی بٹ سے وار کر کے جس سے میں سر پر لگ کر زخمی ہوا اور

attached to be
only of original

IN THE COURT OF MUHAMMAD SAEED AMJAD
ADDITIONAL SESSIONS JUDGE-XI, PESHAWAR

Bail petition No. 2296 /BA of 2018

"Misbah Ullah vs the State"

Or _____
04.07.2018

Present; APP for the State and learned counsel for the accused/petitioner. Complainant Fawad Ali & PW Shahab ud Din present in person. Record is available in connected case, titled "Sher Ali vs the State"

2. The accused / petitioner Misbah Ullah son of Niaz Muhammad seeks his post arrest bail in case FIR No. 911 dated 27.12.2017 u/s 15 AA/412 PPC / 17 (3) Haraba PS Gul Bahar, Peshawar.

3. Arguments heard and record gone through.

4. Perusal of record reveals that the previously bail petition of the accused / petitioner in the instant has been dismissed on merits by this court vide order dated 05.05.2018. Now the accused / petitioner has applied for his post arrest bail on the basis of compromise. Today at the very outset, complainant namely Fawad Ali son of Khuna Gul & PW Shahab ud Din appeared before the court and stated at the bar that they have effected genuine compromise with the accused / petitioner. To this effect their joint statement recorded before the court wherein they stated that the accused /

ATTESTED

05 JULY 2018
(Signature)
Sessions Court Peshawar

petitioner has satisfied them regarding his innocence and they do not want to charge the accused / petitioner in the instant case furthermore. They have got no objection on his release on bail. In this regard they have also produced written affidavit Ex PA, which is placed on file.

5. Although, the offence for which the accused/petitioner has been charged is non-compoundable in nature, however, it is settled by the Superior court that bail can be granted even in non-compoundable offences on the basis of compromise. In this regard guidance is being taken from 1999 P. Cr.L.J 1107 [Lahor], 2010 P. Cr.L.J 1482 [Lahor], wherein it has been held that judicial notice of compromise in non-compoundable offences, not mentioned in section 345 (1) Cr.PC, can be taken and the same may be considered as a ground for grant of bail in the interest of justice and equity. Reliance in this regard is also placed upon an unreported judgment of hon'ble Peshawar High Court, Peshawar in BA No. 849-P/2013 dated 11.07.2013, wherein his lordship has held as under.

ATTESTED

05 JUL 2018

Signature Peshawar

“If this is the position when the complainant and his witnesses have refused to charge the accused in any manner in the trial court, then

the other evidence including those of the police officials would not be sufficient to carry conviction on a capital charge"

Moreso, the grant of bail does not mean acquittal of accused it is merely handing over of accused to the hands of sureties who are duty bound to produce the accused on each and every date of hearing.

6. Resultantly, the instant petition is allowed and the accused/petitioner be released on bail on the sole ground of compromise, if he furnishes bail bonds in the sum of Rs.100,000/- (one lac only) with two sureties each in the like amount to the satisfaction of this court. Sureties must be local, reliable and mer. of means.

7. File be consigned to the record room after its completion.

Announced.
04.07.2018

Muhammad Saad Amjad
Additional Sessions Judge-XI,
Peshawar

CERTIFIED TO BE TRUE COPY

05 JUL 2018

(Examiner)
Copying Agency Sessions Court
Peshawar

No:	11065
Dated of Application	5-7-18
Name of Applicant	Adil Hussain
Word	3200
Fee	Urgent Fee
Signature of Applicant & Date	
Dated of Preparation	5-7-18
Date of Delivery	5-7-18