


FORM OF ORDER SHEET

Court of _____

Case No.- _____ **191/2023**

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/1/2023	<p>The appeal of Mr. Shakeel Nasir re-submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before touring Single Bench at Peshawar on _____ Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Shakeel Nasir son of Nasir Jan Ex-Constable Special Branch Tal Hango received today i.e. on 6.01.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal may be attested.
- 4- Annexures H & I of the appeal are illegible which may be replaced by legible/better one.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 107 /S.T,

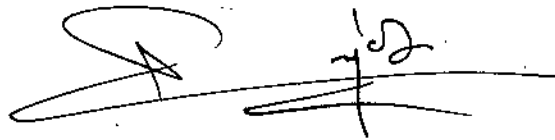
Dt. 9/01 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Ad.
High Court Pesh.

Sir,

Re-submitted after removing
~~the~~ objections.



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 191 /2023

Shakeel Nasir

Versus

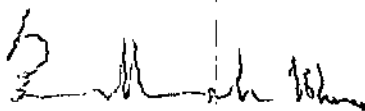
SSP & Others

I N D E X

S.#	Description of Documents	Annex	Page
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2.	FIR No. 06 dated 05-01-2020	"A"	5-6
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Appellant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated 03-01-2023

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 191 /2023Khyber Pakhtunkhwa
Service TribunalPage No. 2813Dated 6/1/23

Shakeel Nasir S/O Nasir Jan,
R/O Kaski Banda,
Shawa Nasrati.
Ex-Constable Special Branch,

Tal Hangu Appellant

VERSUS

1. Senior Superintendent of Police,
Special Branch, Peshawar.
2. Deputy Inspector General of Police,
Special Branch, Peshawar
3. Inspector General of
Police, KP, Peshawar. Respondents

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE ORDER NO. 5184-90 / EB DATED 25-
06-2020 OF R. NO. 01, WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE OR OFFICE ORDER NO.
6102-05 DATED 04-08-2020 OF R. NO. 02 WHEREBY
APPEAL OF APPELLANT WAS REJECTED OR OFFICE
ORDER NO. 1170/21 DATED 17-03-2021 OF R. NO. 03
WHEREBY REVISION PETITION OF APPELLANT WAS
REJECTED BY THE BOARD.**

Respectfully Sheweth:

1. That on 08-05-2009, appellant was enlisted as Constable and since then performed his official duties to the best of the ability and without any complaint.

2. That unfortunately, appellant was dragged in criminal case by the enemies with all family members and as a result, FIR No. 06 dated 05-01-2020 PS Yaqoob Khan Shaheed District Karak u/s 302,324,148,149,34 PPC was registered by complainant Mujeebullah. (Copy as annex "A")
3. That at the same time, appellant was serving at Police Station Hangu, so on 06-01-2020, BBA from Session Judge Hangu with Transitory Bail was got and was directed to approach before the proper forum at District Karak on 13-02-2020. BBA was recalled by the court of Additional Session Judge Karak on the said date. He then applied for regular bail to the court of law which was rejected on 03-04-2020.
4. That appellant was then served with Charge Sheet on 24-01-2020 which was replied and denied the allegation. (Copies as Annex "B")
5. That on 07-03-2020, appellant applied for grant of bail before Peshawar High Court, Peshawar Bannu Bench which was allowed on 15-04-2020 by the hon'ble court and was then released from jail on 16-04-2020. (Copy as Annex "C" & "D")
6. That enquiry into the matter was initiated but the same was not conducted as per the mandate of law, yet on 05-06-2020 it was held in the report that appellant was not present at the place of duty. Legal action by keeping the enquiry pending till the decision of the said case in the court. (Copy as Annex "E")
7. That on 19-06-2020, appellant was served with Final Show Cause Notice regarding involvement in criminal case, so he be awarded major penalty of dismissal from. (Copy as annex "F")
8. That the said Final Show Cause Notice was replied that appellant has no concern with the criminal case. (Copy as annex "G")
9. That on 25-06-2020, appellant was dismissed from service with immediate effect. (Copy as annex "H")
10. That thereafter, appellant submitted representation before R. No. 02 which was rejected on 04-08-2020. (Copies as annex "I" & "J")

11. That appellant then submitted Revision Petition before R. No. 03 for reinstatement in service which was also rejected on 17-03-2021. (Copies as annex "K" & "L")
12. That on the other hand, trial in the case was initiated against appellant and after concluding the same, he was acquitted of the baseless charges vide judgment dated 11-11-2022. (Copy as annex "M")
13. That on 12-12-2020, appellant submitted subsequent representation before R. No. 02 after acquittal from the criminal case but without any response till date. (Copy as annex "N")

Hence this appeal, inter alia, on the following grounds:-

GROUNDS:

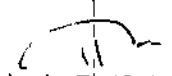
- a. That appellant has no concern, whatsoever, with the commission of offence. All the family members were charged for a single murder case.
- b. That no proper enquiry was conducted into the matter. Neither any statement of any concerned was recorded nor appellant was afforded opportunity of cross examination.
- c. That in the enquiry report, the department was directed to not finalize the enquiry proceeding till the outcome of the criminal case but instead, major penalty of dismissal from service was imposed upon the appellant.
- d. That the respondents did not take the enquiry proceedings against appellant as per the mandate of law and showed high handedness in the matter to oust him from service.
- e. That the impugned orders are not only illegal and unjust but are based on malafide.

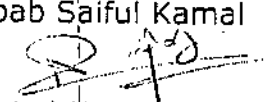
It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 25-06-2020, 04-08-2020 and 17-03-2021 of the respondents be set aside and appellant be reinstated in service with all consequential benefits.


Appellant

Through


Saadullah Khan Marwat


Arbab Saiful Kamal


Amjad Nawaz
Advocates.

Dated 03-01-2023

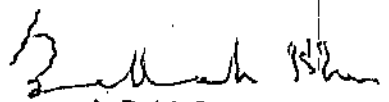
AFFIDAVIT

I, Shakeel Nasir S/O Nasir Jan, R/O Kaski Banda, Shawa Nasrat, Ex-Constable Special Branch Tal Hangu (Appellant), do hereby solemnly affirm and declare that contents of Service Appeal are true and correct to the best of my knowledge and belief.


DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.


ADVOCATE

گورنمنٹ آف پنجاب، لاہور (سروکاروں کی خدمات پر) (پرمٹنگ)

نمبر (15-2020)


ابتدائی اطلاعی رپورٹ

بتاریخ 05-01-2020ء کو پیش کردہ رپورٹ میں مذکورہ درجہ وار محکمہ کا نام (15-2020) کے تحت

شمارہ	7KS
تاریخ و وقت رپورٹ	05
تاریخ و وقت رپورٹ	09.30
نام و سکونت اطلاع دہندہ	محمد حبیب اللہ ولد شانا صاحب کسکی بانڈہ
مختصر کیفیت جرم (معدومہ حال اگر کچھ لیا گیا ہے)	34
پائے وقوعہ فاصلہ تھانہ سے اور سمت	لاہور، سوسم واگے واقعہ کسکی بانڈہ فاصلہ 8 کلو میٹر مانا جنوب اتر
نام و سکونت ملزم	
اگر کوئی جو تحقیق کے متعلق کی گئی اگر اطلاع درج کرنے میں تاخیر ہو تو اس پر بیان کرو	مذکورہ مذکورہ کسکی بانڈہ سے مل گیا ہے۔
تھانہ سے روانگی کی تاریخ و وقت	لاہور، سوسم واگے واقعہ کسکی بانڈہ سے

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریر کے ساتھ پنجاب لیفرنڈ
 سرٹیکٹ ماٹریل 5087 سے مدلل ہونے پر جو درج ذیل ہے۔ انیسواٹھ مارچ 1945ء دوران گذشت اطلاع ملی کہ
 میٹال کٹ فوقی لکھن لائٹا ہے۔ میٹال کٹ فوقی آکر میٹال میں لکھی اراں مقول اجمل خان ولد
 شانا صاحب 1940ء سال سنہ کسکی بانڈہ موجود باکری حق مقول ہرا در اس صاحب اللہ ولد شانا صاحب
 نبر 1946ء سال شناختی کارڈ نمبر 1-4805762-14203-9798845-0343 کے
 کسکی بانڈہ میں درج رکھی ہے کہ امرورم نمبر 6107 کے ساتھ ہرا در مقول اجمل خان
 لاہور سوسم واگے واقعہ کسکی بانڈہ چلے گئے۔ اور وہاں پہلے سے شاکھیں کٹ کر دھڑوں کو گھر
 کے لئے جانے کیلئے دیئے۔ اور ہم در فون کچھوں کیلئے کہا میں کٹا دیتے ہے۔ ہوا ٹھیکہ 80 ہے
 اجمل خان سے کچھ ماہنگہ پر چھوٹے پیمانے کیلئے چلا گیا۔ زمین فوجت کے بعد جب واپس لگانے
 ہوا۔ تو دیکھا کہ عجمان ناصر خان، رسول رحمان لیسران سلطان خان، شکیل صاحب، حاجی علی شاہ
 لیسران ناصر خان، کنان ذبیہ ام سلمہ، انیسواٹھ مارچ 1945ء اور ہرا در ام سے پاس
 شکیل صاحب جو کہ باسکٹ بول تھا۔ اگر کیا کہ انکے درختوں سے شاکھیں کھوں کٹا دیتے ہو۔ اور ساتھ
 ہی اس پر پتوں ایم کہے ان پر با ارادہ قتل ماٹریل کی۔ جسکی ماٹریل سے وہ لگا کر گئے
 لیسران اور معلوم ہر جان بحق ہوا۔ میں انکی طرف لیتا۔ تو چلے نہ کورہ کسان نے مجھ پر با
 ارادہ قتل ماٹریل شریک شروع کی۔ جسکی ماٹریل سے میں نے زمین پر لیٹ کر بال بال بچ گیا۔
 عجمان صاحب کسکی بانڈہ سے شوقہ نظر کی کچھ طرف بھاگی تھا۔ عجمان صاحب کے درختوں
 سے لڑائی ہوئی تھی، تو عجمان صاحب نے میں پر ہرا در ام سے قتل لیا اور مجھ پر

با ارادہ قتل نامیہ نکل کر کے کا بہ خلاف مذکورہ بالا دعویٰ ہداری کرتا ہوں۔ دستخط و انگری
 ما رہائی پولیس صاحب گفٹہ سائل رپورٹ درج بالا پورے حرف با حرف لکھ کر سنائی: سنائی گئی۔ در سنائی
 سیم کہے دستخط و انگری میں ثبت کی۔ جکا میں بعد ہی کرتا ہوں۔ مشمول کا نقشہ ہزار ہر
 صورتحال برفوں یو سٹارٹم ذہن حفاظت کا نیشنل ساہبہ شمال 22 حوالہ ڈاکٹر صاحبانی میرا
 برفوں جاکہ گئی FIR بدعت کا نیشنل نمبر 5087 ارسال قضاہ ہے۔ در اندازہ 2020 صدر
 نقول FIR برفوں نیشنل حوالہ KBI سٹاف سپرٹے۔ دستخط و انگری برفوں 21
 مدیم 25/11/2020 ما رہائی قضاہ میں آمدہ سراسر حرف بحرف درج بالا پورے ہر ہر
 بالا جان پورے نقول FIR سراسر برفوں نیشنل حوالہ KBI سٹاف کیا جانے
 ہر ہر گزارش ہے۔


 114-PS-4143
 5-1-2020

مقدمہ 12/02/2020 کو عدالت میں داخل شدہ کیس نمبر 38C
 عدالت میں داخل شدہ کیس نمبر 38B
 عدالت میں داخل شدہ کیس نمبر 38A
 12-02-2020

مقدمہ 24/02/2020 کو عدالت میں داخل شدہ کیس نمبر 38C
 عدالت میں داخل شدہ کیس نمبر 38B
 عدالت میں داخل شدہ کیس نمبر 38A
 24-02-2020

اطلاعات کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی سر یا نشان لگایا جائے گا۔ اور اسے تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف با سب سرخ رنگ و شمال سے
 ایک نوزم یا مشہور علی الترتیب واسطے باشندگان عاقد غیر یا سبب الیشام یا افغانستان جہاں سوزوں ہوں لکھنا چاہئے۔

B

7

CHARGE SHEET.

I, Javaid Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar as a competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) hereby charge you **Constable Shakil Nasir No.169** as follow:-

You while posted at field office SB AGO Hangu, got involved in Criminal case bearing FIR No.6 dated 05.01.2020 U/S 302/324/148/149 PPC, PS Yaqoob Khan Shaheed Takhti Nasrati, District Karak, wherein you were charged for committing culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak by using his pistol.

By the reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said rules.

1. You are, therefore, directed to submit your written defense within 7 days of the receipt of this Charge Sheet to the Enquiry Officer.
2. Your written defense, if any, should reach to the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action will be taken against you.
3. You are also at liberty, if you wish to be heard in person.
4. Statement of allegation is enclosed.

(Javaid Khan)

Superintendent of Police Admn:
Special Branch Khyber Pakhtunkhwa,
Peshawar.

24-01-2020

8

SUMMARY OF ALLEGATIONS.

I, Javaid Khan, SP/Admn: Special Branch, Khyber Pakhtunkhwa Peshawar being competent authority, is of the opinion that Constable Shakil Nasir No.169/SB rendered himself liable to be proceeded against, as he has committed the following acts of omissions / commissions within the meaning of Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014).

STATEMENT OF ALLEGATIONS.

He, while posted at field office SB, AGC Hangu, got involved in Criminal case bearing FIR No.6 dated 05.01.2020 U/S 302/324/148/149 PPC, PS Yaqoob Khan Shaheed Takht-i-Nasrati, District Karak, wherein he was charged for committing culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak by using his pistol.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation, SP/Intelligence Mr. Razaullah Khan is appointed as Enquiry Officer to conduct Departmental Proceeding under Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014).

3. The Enquiry Officer shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

(Javaid Khan)

Superintendent of Police Admn:
Special Branch Khyber Pakhtunkhwa,
Peshawar.

S26-27

No. /EB: dated Peshawar the 24 / 01 / 2020.

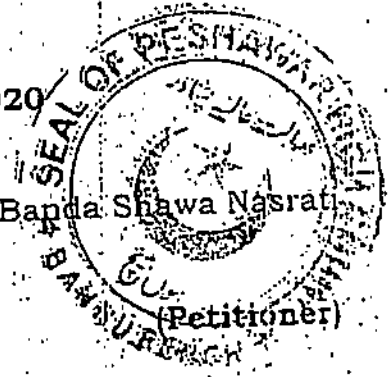
Copy of above is forwarded to the:-

1. Enquiry Officer with the direction to initiate departmental proceedings against the accused under the ibid Rules and submit his findings in shortest possible time.
2. Official concerned.

9
BEFORE THE HONORABLE PESHAWAR HIGH COURT
PESHAWAR

Bail Application No 151-B /2020

Shakeel Nasir s/o Nasir Jan r/o Kaski Banda Shawa Nasrati
Tehsil Takht-e-Nasrati District Karak



VERSUS

1. The State
2. Mujeebullah s/o Ghana Meer r/o Kaski Banda Shawa Nasrati
Tehsil Takht-e-Nasrati District Karak

(Respondents)

CASE FIR NO. 06 DATED 05-01-2020 UNDER SECTIONS
302/324/148/149 PPC PS .Y.K.S TAKHT-ENASRATI
DISTRICT KARAK.

Petition under section 497 for the release of Accused/Petitioner
on bail till the final decision of the case.

RESPECTFULLY SHEWETH:

1. Brief facts of the case in hand are that the Accused/Petitioner has been falsely charged in the above captioned FIR. (Copy of FIR Annexure "A")
2. That the accused/petitioner submitted bail application before the Learned Additional Session Judge Takht-e-Nasrati which was dismissed on 03-03-2020. (Copy of the Application & Order dated 30-11-2019 is Annexure "B & C").
3. That feeling aggrieved by the order of the Honorable Additional Session Judge Takht-e-Nasrati, accused/Petitioner approached to this Honorable Court for resale of accused on bail with the following grounds inter alia.

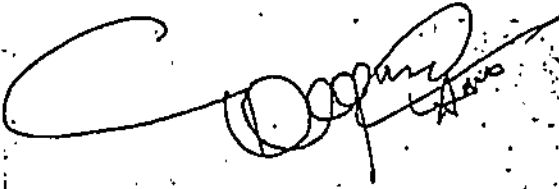
Filed Today
07 APR 2020
[Signature]
Additional Registrar

ATTESTED
EXAMINER
Peshawar High Court
Banda Nasrati

[Signature]

- a. That, the accused/petitioner is absolutely innocent and have been falsely been implicated in the instant case with ulterior motive and mala fide intentions.
- b. That, there are no reasonable grounds through which the accused/petitioner can be connected to the commission of offence with which he have been charged.
- c. That the order and question is completely in grass violation of the judgments of the Superior Court having binding effects.
- d. That the PM report, site plan, FSL report and FIR do not support each other.
- e. That all the male members of the family have been falsely charged.
- f. That of after getting knowledge of the charge the accused/petitioner voluntarily submitted himself before the Court.
- g. That investigation in the instant case is completed and the accused/petitioner is no more required for further investigation.
- h. That recovery has been planted against the accused.
- i. That the accused/petitioner is never been involved in such like cases.
- j. That the accused/petitioner was not present even in district Karak he was present in District Hangu.

Filed Today
 07 APR 2020
Asad
 Additional Registrar

ATTESTED 
 EXAMINER
 Peshawar High Court
 Bannu Bench

11
k. That the instant case comes within the ambit of section 497
(2) Cr.P.C for further inquiry.

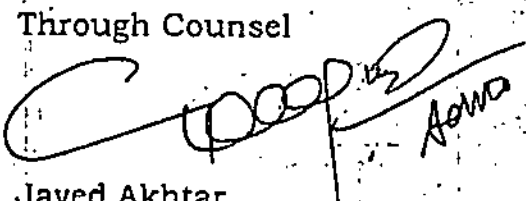
l. That rest of the accused charged in FIR or on bail therefore
on ground of principal of consistency the accused petitioner
is also liable to the concession of bail.

m. That the rest of the points will be raised at the time of
arguments.

It is therefore, most humbly prayed, that the
accused/petitioner may please be enlarged on bail till the
competition of the trial.

Accused/Petitioner
Through Counsel

Dated: 07-03-2020


Javed Akhtar
Advocate High Court

CERTIFICATE:

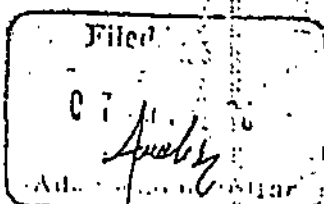
This is to certify that no such like application has been submitted
earlier nor it is pending disposal before any other forum as per the
information given to me by my client.


Advocate

Note:

Notice of filling of this petition has been sent to the
complainant on the address given in the FIR through
registered post.


Advocate



ATTESTED

EXAMINER
Festha-e-High Court
Bannu Bench

D

12

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.**
(Judicial Department)



Cr. Misc: B.A No: 151-B of 2020.

Shakeel Nasir

Vs

The state and another.

JUDGMENT

Date of hearing 15.4.2020

Appellant-Petitioner

by Mr. Javed
Arbter

Respondent

by Mr. Javed Jamal
State by Mr. Qudus ul-Mah

MUSARRAT HILALI, 1.- Through present petition

the petitioner Shakeel Nasir seeks his release on bail

in case FIR No. 06 dated 05.01.2020 registered

under sections 302/324/148/149 PPC at police

Y.K.S Takht-e-Nasrati, District Karak.

2. In essence on 05.01.2020 the

complainant Mujibullah charged the

accused/petitioner along with co-accused for

ATTORNEY
EXAMINER
Peshawar High Court
Bannu Bench

committing murder of his brother namely Ajmal Khan and attempting at his life.

3. Learned counsel for the petitioner contended that the accused/petitioner is innocent and has falsely and maliciously been charged by the complainant for the murder of his brother; that the complainant is inimical towards the accused/petitioner and from the facts narrated in F.I.R, his presence on the place of occurrence is doubtful as he had not tried to save his brother during the incident and also that he has not received any injury though he was in the line of firing; learned counsel added that the ocular version is contradicted by the post mortem report as according to the complainant when fired, the deceased got hit and died on the spot while the post mortem report disclosed the duration between injuries and death as 30 minutes; that no blood was recovered from the point of deceased while the report shows excessive bleeding inside and outside the body.

AT: 25/11/2011
 2
 District Court

Refuting these arguments learned counsel for complainant assisted by worthy A.A.G submitted that the deceased was brutally murdered by the accused persons; that the accused/petitioner is directly charged for effective firing at deceased; that the complainant was very much present at the place of occurrence but could not save his brother being unarmed; that when he tried to reach his brother, the co-accused fired at him but he luckily escaped unhurt.

4. Arguments heard, record perused.

5. Under the provision of sub-section 1 of section 497 Cr.P.C (1) When any person accused of non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with

(1)
[Handwritten scribble]

ATTESTED
[Signature]
Public Prosecutor
Karnataka State

death or [imprisonment for life or imprisonment for ten years].

6. It is well settled that at the stage of considering the bail petition, the Court does not enter into a threadbare examination of the prosecution case, however, it is incumbent upon the Court to exercise its discretion judiciously, consciously and strictly in accordance with the provision of sub section 1 of section 497 Cr.P.C. In the said provisions as quoted hereinabove, the words if there appears reasonable ground for believing contemplates that the Court is to see whether there is anything available on the record which can be said to be a ground for believing that the accused is guilty.

Law

7. In the instant case, as has been pointed out by learned counsel for the petitioner that from the averments made in the F.I.R, the death of deceased was immediate while the post mortem

ATTESTED

[Signature]

Public Prosecutor

State of Karnataka

report discloses that deceased was alive for 30 minutes after receipt of injury on his body as probable time between injuries and death has been shown as 30 minutes. In addition the injuries on the body were reportedly bleeding excessively inside and outside the body but no blood was found at the place where the deceased fell down.

A post mortem report is a check upon the testimony of the eyewitnesses as it may establish certain facts quite apart from other evidence. The august Supreme Court in case titled "Ambras Vs the State reported in (2016 SCMR 1558), has held as under:-

وکیل سرکار کی یہ دلیل کہ ان نکات کو ضمانت پر بحث کے دوران زیر مباحثہ لانا اور باریک بینی سے جائزہ نہیں لیا جا سکتا، عدالت ہذا کی نظر میں قابل قبول نہیں کونکہ در سنالان کی قید سے نجات کا سوال عدالت کی نظر میں زیادہ اہمیت رکھتا ہے۔ نیز یہ امر مسلمہ طور پر طے شدہ ہے کہ ریائی بر ضمانت کے وقت اگر کسی فوجداری مقدمے میں کوئی معقول شک پیدا ہوتا ہو تو اس کا فائدہ ملزم کو لازمی طور پر دینا چاہئے اور اسی پیش منظر میں عدالت ہذا نے مختلف نظائر شائع شدہ اور

ATTESTED
 3
 PROSECUTOR
 GENERAL
 PUNJAB

غیر شائع شدہ ہیں یہ اصول طے کیا ہے کہ بحث پر ضمانت درخواست کے وقت عدالت مواد بر مثل کا سرسری اور وقتی جائزہ لینے کی حقدار ہے جبکہ ایسا کرتے ہوئے مواد بر مثل کا حتمی اور گہرا جائزہ لینے سے پرہیز کیا جائے۔

Further, in case title "Manzoor and 4 others Vs. the State" reported in (PLD 1972 SC 81) their Lordships were of the view that:-

'It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.'

Reference can also be made to case "Syed

Khalid Hussain Shah Vs. the State and

another" reported in (2014 SCMR 12),
"Awal Khan and 07 others Vs. The State
through A.G, K.P.K and another"
reported in (2017 SCMR 538).

8. In view of the above facts and
circumstances this Court is of the view
that case of petitioner needs further
inquiry as much has been left by the
investigating officer during investigation.
Resultantly, the instant bail petition is
accepted and the accused/petitioner be
released on bail provided he furnishes bail
bonds in the sum of Rs. 1,00,000/-
(rupees one lac) with two sureties each in
the like amount to the satisfaction of Ilaqa
/Duty Magistrate.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

The observations made in this order are tentative in nature and shall not affect the case of prosecution during trial.

These are the detailed reasons of my short order of even date.

Announced.

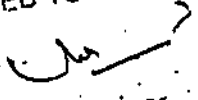
15.4.2020

Ihsan.*/

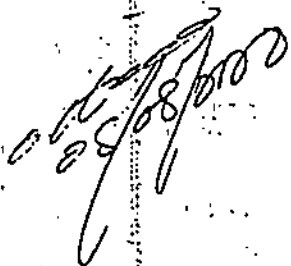
Sd/ Justice Ms. Musarrat Hilal, J.

CERTIFIED TO BE TRUE COPY

(S.D) Hon'ble Justice Musarrat Hilal.



Examiner
Peshawar High Court Bannu Bench
Authorized Under Article 87 of
The Qanun-e-Shahadat Ordinance 1984



**DEPARTMENTAL ENQUIRY INITIATED AGAINST FC/169 SHAKEEL NASIR
OF SPECIAL BRANCH STAFF, TALL, DISTRICT HANGU
(PRESENTLY SUSPENDED AND CLOSED TO SPECIAL BRANCH,
HEADQUARTER, PESHAWR)**

Brief facts of the allegations:

Shakeel Nasir FC/169 while posted as beat officer, SB office Hangu (now suspended and closed to SB/Hqrs, Peshawar) got involved in criminal case bearing FIR No: 6, dated 05-01-2020 u/s 302/324/148/149 PPC, PS Yaqoob Khan Shaheed Takht Nasrati, district Karak, wherein he was charged for committing culpable homicide/murder of Ajmal Khan s/o Shahamir r/o Kisak Bauda, Karak by using his pistol.

In order to dig out the real facts discreet enquiry as well as the statement of the following Police officers/officials were also recorded which is placed on file.

1. Statement of Shakeel Nasir FC/169, alleged Police Official (Annex-A)

Shakeel Nasir FC/169, Beat Officer SB Office Hangu (presently suspended and closed to SB Hqrs) stated in his statement that plaintiff Mujeebullah son of Shanamir resident of Kaski Bauda, who is a close relative of mine has filed a false and self-incriminating case FIR No: 06, dated 05-01-20 u/s 302/324/148/149 PPC, PS Yaqoob Shaheed Takht Nasrati, Karak against him on the basis of hatred. His father Nasr Jan, brother Mujahid Nasir and uncle Rasool-ur-Rehman have also been claimed in the same case. On 05-01-2020 at 08:00 hrs: as a routine, he remained present in his beat area duty at Tall Bazar, district Hangu. He resides in the jurisdiction of PS Tall and on that morning he went to his duty point Tall Bazaar and can confirm from the people of his beat area who have seen him performing duty on the day of occurrence. On the same day he came to know that a case has been registered against him in Police Station Yaqoob Shaheed Takht Nasrati, Karak. He immediately rushed to his office at 10:00 AM and told the detail to ASI Mukhtiar Gul. On 06-01-20, he obtained BBA from the court of Sessions Judge, Hangu. Later on, the Additional Sessions Judge Takht-e-Nasrat ordered him to appear before the court on 13-01-20. He appeared before the Additional Sessions Judge, Takht Nusrati on 13-01-20 where after giving different hearing dates, the same court canceled his BBA on 13-02-20 and ordered him to be sent to Karak jail on 16-02-20. He was released on bail on 16-04-20 after spending two months in Karak Jail. He is innocent and has nothing to do with this case. Therefore, he seeks justice.

2. Statement of Inspector Saifur Rehman, SHO PS Pezu, Lakki Marwat, ex-Incharge Investigation PS Yaqoob Khan Shaheed, Karak (Annex-B)

Inspector Saifur Rehman, SHO PS Pezu, Lakki Marwat, ex-Incharge Investigation PS Yaqoob Khan Shaheed, Karak stated in his statement that he has investigated a case FIR No: 6,

dated 05-01-20, u/s 302/324/34 PPC, PS Yaqoob Khan Shaheed Takht Nasrati, Karak. The plaintiff Mujibullah s/o Shanamir r/o Kaski Banda has claimed against Nasir Jan s/o Sultan Jan, Rasoolur Rehman s/o Sultan Jan, Shakeel Nasir s/o Nasr Jan and Mujahid Ali Shah s/o Nasr Jan residents of Kaski Banda in the above mentioned case. He investigated the case very carefully and on merit basis. The accused Shakeel Nasir, posted as Constable in Special Branch, Hangu has submitted an application about his innocence in the above mentioned case. In this regard SI Inayat Zaman has recorded the statements of the accused and the eye witnesses. During the course of enquiry, contradiction was found between the statements of accused/witnesses and the CDR data of the alleged Police official. According to the CDR, Shakeel Nasir was found in his house at the time of incident and after committing the offence, was found to be heading towards district Hangu. The location of the accused Shakeel Nasir was traced out through CDR that on the day of occurrence, he left towards district Kohat via Lachi Indus Highway at 11:00 hrs. which proves that he is lying. During the interrogation, the accused Shakeel Nasir not only spoke about the incident but also pointed out his companions who have also admitted their involvement in the crime. Furthermore, the accused's CDR data also verifies the case and the plaintiff's statement. In light of all the facts and the investigation process, the accused Shakeel Nasir was found guilty along with his colleagues against whom he had conducted a very impartial investigation.


Enquiry Finding:

Keeping in view the above facts, the undersigned reached to the conclusion that it is evident from the record that FC Shakeel Nasir was not present at the place of his duty point at Talli district Hangu on the day of occurrence. According to the CDR photocopy, his location was traced out in his village/district Karak, not in his place of duty point at district Hangu on the day of occurrence.

Therefore, the undersigned reached to the conclusion that the allegation leveled against FC Shakeel Nasir has been proved. It is, therefore, suggested that legal opinion may be asked from DSP Legal whether the enquiry file may keep pending till the decision of the said case in the concerned Court or otherwise please.

Encls: (5 Pages)

Date: 05-06-2020


Tariq Habib Khan,
Superintendent of Police,
Special Branch, Headquarter Peshawar.

FINAL SHOW CAUSE NOTICE

I, Muhammad Irshad Khan SSP/Admin: Special Branch KP, Peshawar being competent authority under Khyber Pakhtunkhwa, Police Rules, 1975 (Amended 2011), issue this final show cause notice to you Constable Shakeel Nasir No. 169/SB on the following grounds:-

That, You while posted in Field office, SB AGO Hangu, got involved in Criminal case bearing FIR No. 6 dated 05.01.2020 u/s 302/324/148/149 PPC, PS Yaqoob Khan Shaheed Takhti Nasrati, District Karak, wherein you were charged for committing culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak by using your pistol.

You were served with Charge Sheet and Statement of Allegations vide this office Endst: No. 526-27 dated 24.01.2020. Tariq Habib SP Peshawar Region was nominated as Enquiry Officer who during the course of Enquiry proceedings, found you guilty of committing misconduct.

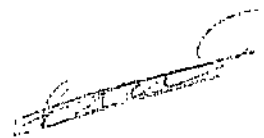
After going through the findings of the Enquiry Officer, the material available on record and other connected papers, I am satisfied that you have committed misconduct within the meanings of ibid Rules. As a result thereof, I Muhammad Irshad Khan SSP/Admin Special Branch Khyber Pakhtunkhwa Peshawar as competent authority has tentatively decided to impose upon you Major penalty of Dismissal from service under ibid Rules.

You are therefore, directed through Final Show Cause within 15 days as to why the aforesaid penalty should not be imposed upon you.

In case your reply is not received within stipulated period, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

Also state whether you desire to be heard in person.

Copy of the finding of the enquiry officer is enclosed.



(Muhammad Irshad Khan)
Senior Superintendent of Police /Admin:
Special Branch KP, Peshawar.

Dated Peshawar, the 19/06/2020

No. 5103 / EB

ضابطہ عالی

جوالم حاصل ہو گا تو اس نمبر 5103/EB جاریہ ضابطہ سپریم کورٹ سے

ایڈمنسٹریٹو مشینوں کے متعلقہ ضابطہ ہوں

کہ میرے خلاف مقدمہ نمبر 06 فورم 05/01 فی م 302-324 پانچ ماہ کے لیے

تعمیراتی لٹریچر کے لیے گناہ دعویداری ہوئی تھی اور من مقررہ آئین کے گناہ جوڈیشل فورٹ ڈسٹرکٹ جیل کے لیے دو ماہ کے لیے بند باسٹائل اور آفیسر کے عدالت عالیہ پٹنور میں کوٹا (نئی) نے من مقررہ کو ضمانت پر رہائی کا حکم صادر کیا اور میں ڈیوٹی پر حاضر ہوا

ضابطہ عالی

قانون کا یہ مسلمہ اصول ہے کہ من مقررہ گناہ جب تک عدالت سے سزا یا جرم کا حکم صادر نہ ہو گا میرے خلاف قلم نام کارروائی بلا جواز اور خلاف قانون شروع نہیں کی جائے۔ میرے خلاف فوجداری مقدمہ میں جوڈی دعویداری ہوئی ہے اور عدالت عالیہ نے ضمانت پر رہائی کرنے کا حکم صادر کیا ہے۔ صرف فوجداری مقدمہ میں دعویداری misconduct کے زمرے میں نہیں آتا ہے۔ اگر میرے خلاف عدالت میں جرم ثابت ہوا، پھر میرے خلاف قلم نام کارروائی کا جواز بنتا ہے۔ مقدمہ بدتمیز نیز جوڈی عدالت ہے۔

لہذا میرے خلاف قلم نام کارروائی خلاف قانون اور خلاف ضابطہ ہے۔ مزید انوائری آفیسر صاحب فوجداری مقدمہ کی تفتیش کی ہے، انہوں نے misconduct کے ارتکاب کے ثبوت کوئی شہادت جمع نہیں کی ہے انہوں نے میرے خلاف misconduct کے ارتکاب کے الزام ثابت کرنے کی کوشش نہیں کی ہے۔ کیونکہ misconduct کا ارتکاب ہوا پیش ہے، جہاں تک فوجداری مقدمہ سے متعلق ہے اس میں باقاعدہ تفتیش ہوئی ہے۔

لہذا انوائری آفیسر کو میرے مقدمہ میں ملوث کے ثبوت کے ثبوت کے بغیر خلاف قانون ہے، انہوں نے اپنے اذیتا رفت سے تجاوز کیا ہے، انوائری آفیسر کو فوجداری مقدمہ میں تفتیش کے لیے حذر نہیں لینا تھا۔ بلکہ قلم نام الزامات کے ثبوت ان کوڈ ہوئی دی گئی، سزا انہوں نے فوجداری مقدمہ کے ثبوت انوائری کی جوہر خلاف قانون ہے

ضابطہ عالی

فی الحال میرے خلاف misconduct کے ارتکاب کے ثبوت کوئی الزام نہیں ہے

کہ میں ہر روز وقت ہر وقت میں اپنے ڈیوٹی کو انجام دیتے ہوئے مل بازار میں وجود تھا۔ مل بازار میں میرے وجود کی بارے میں مل کے لوگوں نے بیان حلفی اور بیانات زیر دفعہ 181 صرف بھی دے چکے ہیں۔ جو کہ نہ حیدر اور شہدہ دار ہے، بلکہ غیر جانبدار اور قوم شناس سے تعلق رکھتے ہیں۔ اور ضلع ہنگو قبیلہ مل کے باشندہ مانا ہے۔ جبکہ میں فرک تمام اور ضلع کرک سے تعلق رکھتا ہے۔ اور ایسے صدر یعنی قتل کا صدر ہیں گواہی دینا صحرایات نہیں ہے، بلکہ حقیقت ہے، بدیں و ہم ان لوگوں نے میرے حق میں بیان دیتے ہیں۔

سائل پر بدیں و ہم دعویٰ داری کی گئی ہے، ہم میں قلم پولیس میں ہوں، اور مدعا پارٹی کا یہ خیال ہوگا، کہ شاید پولیس میں ہوتے ہوئے ان کا پولیس کیساتھ تعلق ہوگا، اور پولیس اپنا قلم کی خاطر اچھے سلوک کا موضوع کیا ہے، مگر ایسا غلط ہے۔

میں پھر بھی واضح بیان کرتا ہوں کہ مدعا پارٹی میرے حقیقی مدعا پارٹی ہے، انہوں نے ذرا اپنے حواس کا اچھا طرح مسلم ہے، جی ذہنی دبا، اور ملازمت صراحتاً کیا ہے، جو پر بنیاد اور من گھڑی صدر میں ڈیوٹی کیا ہے، جو حقیقت سے بالکل تعلق نہیں رکھتا ہے۔

ضلع والا

آفس میں دنیا سے اسٹریٹ جارجیم امدان ضرور اللہ تعالیٰ کو جواب دہ ہو گیا، ہم دنیا خالی ہے، اور اللہ تعالیٰ کو جو بی علم ہے، اگر میں اتنا صفائی پیش کروں، صاحب بازار کو کون سے اور کیسے میرے آواز سن لے، اور میں بے گناہ ہوں، اور جی غلط اور بد نہیں ہر صدر میں ملوث کیا گیا ہے، مزید پر قسم صفائی بھی تیار ہوں،

اسٹریٹ جارجیم فائنل شو مارٹن لوٹس مزید کسی کارروائی کے داخل دفتر فرمادیں جاویں
بتدرہ تا دیات دعو کو روکیا

الفاظ

التماسیہ نمبر 169 SB حصہ ڈکویٹر لٹاور

ST

H 25 Bader ag.

ORDER

This order is passed to dispose of departmental proceedings initiated under Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014) against constable Shakeel Nasir No. 169. Facts forming the background of the departmental proceedings are as under-

Constable Shakeel Nasir No. 169 (hereinafter referred to as an accused officer) while posted in Field Office. SB AGO Hangu got involved in Criminal case hearing FIR No.6 dated 05.01.2020 U/S 302/324/148/149 PC PS Yaqoob Khan Shaheed Takhti Nasrati, District Karak, wherein he was charged for committing culpable homicide murder of Ajmal Khan S/o Shanamir r/o Kisaki Banda, Karak by using his pistol.

Charge Sheet and statement of allegations based on said charges were issued to the accused officer vide this office Endst No.526-27 dated 24.01.2020. Initially Raheem Shah SP Intelligence was appointed as Enquiry Officer nevertheless the officer was transferred and Tariq Habib SP/ Peshawar Region was nominated as Enquiry Officer to scrutinize the conduct of accused officer with reference to the charges leveled against him. The enquiry officer after conduct of Enquiry, in his findings reached to the conclusion that the accused officer is found guilty of commission of misconduct as the accused officer throughout the inquiry proceedings denied his involvement in the offence and continued claimed that he was on duty at lall Bazar however his stance proved totally incorrect/ lie as he was present in his village/ abode on this fateful day and as per call data record (CDR) of his phone, location of accused officer was shown as Lachi heading towards Kohat soon after the occurrence at 1109 hours which made his character lightly doubtful and endorses the prosecution version of FIR.

After going through the findings of the Enquiry Officer the material available on record and connected papers. I am satisfied that the accused Officer committed misconduct within the meaning of ibid rules.

Before imposing major punishment, he was issued Final Show Cause Notice and heard in person by the undersigned that why the aforesaid penalty should not be imposed upon him however the accused officer flatly denied all the charges/ allegations against him and declared as baseless, mala fide and without footing. His reply to the final Show Cause notice is not satisfactory as it is proved beyond shadow of doubt during enquiry proceedings that accused officer is indeed involved in a criminal case.

As a result thereof, I Muhammad Irshad Khan Senior Superintendent of Police Admn Special Branch Khyber Pakhtunkhwa Peshawar being a competent authority under ibid Rules hereby award to accused officer major Punishment of dismissal from service with an immediate effect.

sd/
Muhammad Irshad Khan
Senior Superintendent of Police Admn
Special Branch Khyber Pakhtunkhwa
Peshawar.

No.5184/90/EB

dated Peshawar the 25.06.2020

Copy to all concerned for information and necessary action.

To

The Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar

Subject: **DEPARTMENTAL APPEAL**

Respected Sir,

With due respect appellant submits departmental appeal against the order dated 25.06.2020 passed by Senior Superintendent of Police admn: Special Branch vide which penalty of dismissal from service was awarded to applicant.

FACTS:

1. That appellant belong to District Karak and was posted as constable in special branch district Hangu. On 05.1.2020 appellant was present on active duty. Later on appellant came to know about registration of criminal case FIR No.06 dated 05.01.2020 under Section 302, 324, 148, 149 in Police Station Yaqoob Khan Shaheed, District Karak against appellant and his other relatives.
2. That appellant did not abscond and managed grant of ad interim from competent court. On 13.02.2020 additional sessions Judge Takht e Nasrati recalled the interim Bail order and appellant was arrested by the police. On completion of physical remand, appellant was put behind the bar in judicial lock up district jail karak.

The lower court also refused post arrest bail to appellant. However, the Hon'ble Peshawar High Court Bannu was pleased to accept the bail prayer of appellant vide order dated 15.04.2020.

3. That on release of bail appellant re joined duties, Through the criminal case registered against appellant is still pending trial,

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To

The Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.

Subject: Departmental Appeal

Respected Sir,

With due respect appellant submits departmental appeal against the order dated 25.06.2020 passed by Senior Superintendent of Police admin: Special Branch vide which penalty of dismissal from service was awarded to appellant.

FACTS.

- 1) That appellant belong to district Karak and was posted as constable in special branch district Hangu. On 05.01.2020 appellant was present on active duty. Later on appellant came to know about registration of criminal case FIR No 06 dated 05.01.2020 under section 302, 324, 148, 149 in Police Station Yuqoob Khan Shaheed, district Karak against appellant and his other relatives.
 - 2) That appellant did not abscond and managed grant of ad-interim bail from competent court. On 13.02.2020 additional session judge Takht-e-Nasrati recalled the Interim Bail order and appellant was arrested by the police. On completion of physical remand, appellant was put behind the bar in judicial lock-up district jail karak.
-

yet the lower authority also initiated departmental proceedings against appellant on same set of criminal allegations, which culminated in passing impugned order, hence this departmental appeal on the following grounds.

GROUNDS.

- a. That charge sheet issued to appellant was stating allegations of involvement in criminal case and not commission of misconduct or negligence in duty.

The criminal case is still pending trial before competent court. Therefore pre trial decision of departmental authority with regard to criminal charge is not justified.

- b. That departmental proceeding being civil in nature concerning with service discipline and criminal proceedings relating to enforcement of criminal liability are quite distinct nature. Separate adjudication forum have been provided for departmental and criminal proceedings. In case of appellant the departmental authority has assumed wrong forum by holding appellant guilty of criminal charge. Therefore, the impugned order is not sustainable under the law and rules.

- c. That departmental proceeding exactly on the same criminal charge are irrelevant and unjustified. Therefore appellant has wrongly been proceeded against departmentally on the basis of charge involvement in criminal case.

- d. That the entire proceeding were conducted in flagrant violation of rules. Enquiry having not been conducted in accordance with law, the entire subsequent action based on that enquiry report had no legal sanctity.

The lower court also refused post arrest bail to appellant. However, the Honorable Peshawar High Court Bannu Branch was pleased to accept the bail prayer of appellant vide order dated 15.04.2020.

- 3) That on release of bail appellant re-joined duties. Though the criminal case registered against appellant is still pending trial, yet the lower authority also initiated departmental proceeding against appellant on same set of criminal allegations, which culminated in passing impugned order, hence this departmental appeal on the following grounds.

GROUNDS.

- a) That charge sheet issued to appellant was stating allegations of involvement in criminal case and not commission of misconduct or negligence in duty. The criminal case is still pending trial before competent court. Therefore pre-trial decision of departmental authority with regard to criminal charge is not justified.
- b) That departmental proceeding being civil in nature concerning with service discipline and criminal proceedings relating to enforcement of criminal liability are quite distinct in nature. Separate adjudication forum have been provided for departmental and criminal proceedings. In case of appellant the departmental authority has assumed wrong forum by holding appellant guilty of criminal charge. Therefore, the impugned order is not sustainable under the law and rules.

e. That the enquiry officer has enquired into the criminal charge and he has not confined himself to the mandate of enquiry into the charge of misconduct.

Enquiry officer was not authorized to ravel beyond the ambit of patent law and rules. Enquiry officer has wrongly stepped into the shoes of alien forum.

f. That the service dossier of appellant is unblemished, therefore the lower authority has wrongly awarded major penalty of dismissal from service on single instance of only involvement in criminal case.

g. That appellant is still accused in the criminal case. It is well settled principle of law that accused is presumed to be innocent until and unless the criminal charge is proved and his conviction order is recorded. Therefore, the impugned order is against the law and rules.

h. That appellant did not abscond and join the investigation without any delay. Therefore appellant was wrongly proceeded against departmentally before adverse decision (if any) on the past of trial decision is not tenable.

i. That whole departmental file against the appellant has been prepared in violation of law and rules. The impugned order has not been based on commission of misconduct. Rather on involvement in criminal case. Therefore, the impugned is void ab initio.

It is therefore requested that the impugned order may be set aside with all back and consequential benefits.

Enclosure Copy of impugned order

Yours Obediently,
Shakeel Nasir,
Ex Constbale No. 169
Cell No. 0336-0056007

- c) That departmental proceeding exactly on the same criminal charge are irrelevant and unjustified. Therefore appellant has wrongly been proceeded against departmentally on the basis of charge involvement in criminal case.
 - d) That the entire enquiry proceeding were conducted in flagrant violation of rules. Enquiry having not been conducted in accordance with law, the entire subsequent action based on that enquiry report has no legal sanctity.
 - e) That the enquiry officer has enquired into the criminal charge and he has not confined himself to the mandate of enquiring into the charge of misconduct. Enquiry officer was not authorized to travel beyond the ambit of patent law and rules. Enquiry officer has wrongly stepped into the shoes of alien forum.
 - f) That the service dossier of appellant is unblemished, therefore the lower authority has wrongly awarded major penalty of dismissal from service on single instance of only involvement in criminal case.
 - g) That appellant is still accused in the criminal case. It is well settled principle of law that accused is presumed to be innocent until and unless the criminal charge is proved and his conviction order is recorded. Therefore, the impugned order is against the law and rules.
 - h) That appellant did not abscond and join the investigation without any delay. Therefore appellant was wrongly proceeded against departmentally before adverse decision (if any) on the past of trial decision is not tenable.
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- i) That the whole departmental file against the appellant has been prepared in violation of Law and rules. The impugned order has not been based on commission of misconduct. Rather on involvement in criminal case. Therefore, the impugned is void ab-initio.

It is therefore requested that the impugned order may be set aside with all back and consequential benefits.

Enclosure: copy of impugned order

You're obediently,

Shakeel Nasir.

Ex-Constable No 169

Cell #: 0336-0056007

30

4-8-20

ORDER


This order is passed to dispose of departmental appeal preferred by Ex-Constable Shakeel Nasir No. 169 under Khyber Pakhtunkhwa, Police Rules, 1975 (Amended 2014) against the impugned order of his dismissal from service. Facts forming the background of the departmental appeal are as follow:-

Constable Shakeel Nasir No. 169 (hereinafter referred to as an accused officer) while posted in Field office, SB AGO Hangu, got involved in Criminal case bearing FIR No. 6 dated 05.01.2020 u/s 302/324/148/149 PPC, PS Yaqoob Khan Shaheed Takhti Nasrati, District Karak, wherein he was charged for committing culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak by using his pistol.

Proper departmental proceedings were initiated against the appellant under KP Police Rules 1975 (amended 2014) by issuing charge sheet and statement of allegations wherein enquiry officer Mr. Tariq Habib SP/Peshawar Region Special Branch was nominated to probe into the matter.

The enquiry officer accomplished enquiry and held the appellant guilty of committing misconduct within the meaning of ibid Rules hence dismissed from service by the competent authority.

His appeal was perused in detail alongwith record of enquiry proceedings by the undersigned but found unsatisfactory having no substance. During enquiry, the appellant throughout the enquiry proceedings denied his involvement in the offence and consistently asserted that he was on duty at Tall bazar however his stance proved totally incorrect/ lie as he was present in his village/ abode on this fateful day and as per call data record (CDR) of his phone, location of accused officer was shown at Lachi heading towards Kohat soon after the occurrence at 1100 hrs which made his character highly doubtful and endorses the prosecution version of FIR. Further he was given an opportunity of hearing in person in Orderly room but the appellant did not convince the undersigned with some cogent explanation regarding portrayal of wrong facts which subsequently proved false by CDR during enquiry proceedings. Therefore the appeal of appellant is rejected and filed in the light of his involvement in serious criminal act of culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak.


(AKHTAR HAYAT KHAN)^{PSP}
Deputy Inspector General of Police,
Special Branch Khyber Pakhtunkhwa,
Peshawar.

6102-05
No. /EB, dated Peshawar the, 04 10/2020.

Copies to all concerned for information and necessary action.

To

12 31
The Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Subject: Revision petition under Rule 11-A Police Rules, 1975 (Amended 2014)

Respected Sir,

With due respect and extreme obeisance the petitioner submits revision petition for annulling the order dated 25.06.2020 passed by Senior Superintendent of Police Admn; Special Branch vide which penalty of dismissal from services was imposed on petitioner and order dated 04.08.2020 passed by Deputy Inspector General of Police Special Branch vide which the departmental appeal of petitioner was rejected.

FACTS:

- 1) That petitioner was serving special branch police as constable district Hangu, on 05.01.2020, the opponents of petitioner falsely implicated the petitioner in murder case FIR No 66 under sections 302, 324, 148, 149 in Police Station Yaqoob Khan Shaheed (Takht-e-Nasrati) district Karak.

- 2) That petitioner surrender himself before police and on 15.04.2020 the honourable Peshawar High Court Bannu Branch was pleased to grant bail to the petitioner.
- 3) That petitioner was proceeded against departmentally on charges of registration of criminal case against petitioner and eventually the impugned orders were passed, hence this petition on the following grounds.

GROUNDS.

- a) That the impugned orders passed by lower and appellate authority are against Law, facts and rules governing the disciplinary actions and proceedings hence liable to be set aside.
- b) That the lower and appellate authority have wrongly assumed the role of trial court of criminal case. Determination of the guilt or innocence of accused is the sole prerogative of the trial court and any decision on the part of departmental authorities about the guilt of accused is legally not allowed. Therefore, the impugned orders are worth set aside.
- c) That the lower authority charge sheeted the appellant on the score of charges of involvement in criminal case and not commission of any misconduct. The inquiry officer made inquiry about criminal charges and not departmental charge. The lower and appellate authorities based the impugned orders on the defective inquiry findings, therefore, the impugned order are not sustainable.

d) That the record of service of appellant was unblemished, the department instead of defending the petitioner against false criminal charge, conducted the entire proceedings in favor of opponents of the petitioner. Petitioner will pay high expenses of defending the criminal charge and the department issued dismissal from service order of petitioner, therefore petitioner will be unable to properly defend the criminal charge and manage family affairs on curtailment of sole source of income of monthly salary.

e) That the impugned order have been passed in premature stage as the criminal case against petitioner is still pending adjudication. The departmental orders before decision of the trial court are not justified because passing of acquittal order of petitioner of criminal charge by trial court will be a question mark on the authenticity of impugned orders.

It is therefore requested that the impugned order may be set aside and petitioner may be re-instated in service and in case the trial court recorded conviction then the departmental proceedings may be reviewed.

Enclosure: copy of impugned order

You're obediently,
Shakeel Nasir,
Ex-Constable No 169
Cell #: 0336-0056007
0346-9295744



INSPECTOR GENERAL OF POLICE

KHYBER PAKHTUNKHWA

PESHAWAR

No. S/ 1170 /21, dated Peshawar the 17/03/2021.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Shakeel Nasir No. 169. The petitioner was dismissed from by SSP/Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 5184-90/EB, dated 25.06.2020 on the allegations that he while posted in Field Office, SB AGO Hangu, got involved in criminal case bearing FIR No. 6, dated 05.01.2020 u/s 302/324/148/149 PPC PS Yaqoob Khan Shaheed Takhti Nasrati District Karak, wherein he was charged for committing culpable homicide/murder of Ajmal Khan s/o Shanamir r/o Kisaki Banda, Karak by using his pistol. His appeal was filed by Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 6102-05/EB, dated 04.08.2020.

Meeting of Appellate Board was held on 02.03.2021. The petitioner was called for hearing but he did not appear.

The Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar vide his office Memo: No. 1591/EB, dated 02.03.2020 intimated that the petitioner is presently languishing in Central Jail, Karak due to cancellation of his bail by Apex Supreme Court of Pakistan in case FIR No. 6, dated 05.01.2020 u/s 302/324/148/149 PPC PS Yaqoob Khan Shaheed Takhti Nasrati District Karak. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

Sd/-

KASHIF ALAM, PSP

Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 1171-80 /21,

Copy of the above is forwarded to the:

1. Deputy Inspector, General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar. One Service Roll alongwith photocopy of enquiry file of the above named Ex-FC received vide your office Memo: No. 7791/Legal, dated 02.10.2020 is returned herewith for your office record.
2. SSP/Admn: Special Branch, Khyber Pakhtunkhwa, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

(IRFAN UL CAH KHAN) PSP

AIG/Establishment,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

M

35

11-11-22

In the Court of
ZAHID KARIM KHALIL
Additional Sessions Judge, Karak at Takht-e-Nasrati.

Sessions Case # : 89/7 of 2020.
 Date of Institution : 19.10.2020.
 Date of Decision : 11.11.2022;

..*.*.*.*.*.*

The State through Mojeeb Ullah son of Shah Namir, resident of Kaski Banda Tehsil Takht-e-Nasrati District Karak.

...Complainant.

-- VERSUS --

(1) Rasool Rehman (2) Nasar Jan both Ss/o Sultan Jan (3) Shakeel Nasir & (4) Mujahid Nasir alias Mujahid Ali Shah both sons of Nasar Jan residents of Shawa Nasrati, Kaski Banda, Tehsil Takht-e-Nasrati District Karak.

...Accused facing trial.

..*.*.*.*.*.*

(18)

(ACCUSED FACING TRIAL # 01, 02 & 04 ON BAIL & 03 IN CUSTODY)

..*.*.*.*.*.*

ATTESTED
 Examiner Court Branch
 Tehsil Courts Takht-e-Nasrati
 Karak

FIR # 06, Dated 05.01.2020, under Section 302/324/34 P.P.C,
Police Station Y.K.S (Takht-e-Nasrati), District Karak.

..*.*.*.*.*.*

JUDGMENT



Accused named above after being booked, and arrested in case FIR # 06, Dated: 05.01.2020, under Sections 302/324/34 P.P.C, Police Station Y.K.S (Takht-e-Nasrati), District Karak, were sent to face trial before this Court.

2. As per contents of FIR Ex.PA/1, Baseer Khan S.I on 05.01.2020 during patrolling in the area got information about the arrival of dead body to Civil Hospital Takht-e-Nasrati, whereupon he alongwith Police Nafri went to Civil Hospital Takht-e-Nasrati where the dead body of deceased Ajmal Khan was found and complainant Mujeeb Ullah reported the matter to the effect that on the eventful day he alongwith his deceased brother at about 07:00 hours had gone to their fields known as Wagai situated at Kaski Banda, there they were cutting Berry tree branches (Dakai); that after cutting of the branches, the same were handed over to children for taking it to the house; thereafter, he alongwith his deceased brothers were busy in cutting grass in the field and at about 08:00 hours, he went to attend the call of nature; after easing himself in the meantime, the accused Nasir Khan, Rasool Rehman sons of Sultan Jan, Shakeel Nasir and Mujahid Ali Shah sons of Nasir Jan duly armed with fire arms appeared; that accused Shakil Nasir armed with pistol came near to his brother and asked him as to why he has cut the berry trees; the said accused aimed pistol upon his brother and started firing at him due to which his brother Ajmal Khan got hit, fell down and expired on spot; that he ran towards his brother, the accused made firing upon him with intent to commit his murder, but

(69)
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 10/1/20
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 Tehsil Courts, Takht-e-Nasrati
 Kaski

luckily he escaped unhurt; that all the accused decamped from the spot towards Shawa Nasrati after the commission of offence. Motive for the offence was dispute over landed property and trees, hence the instant FIR.

3. Investigation in the case was carried out and after completion of investigation the case was put in Court against the above named accused. Accused were put on notice wherein accused Rasool Rehman, Mujahid Nasir and Nasar Jan appeared on bail while co-accused Shakil Nasir was produced in custody and copies of relevant statements and documents were supplied to accused Rasool Rehman, Mujahid Nasir and Shakil Nasir on 06.02.2021 while to that of accused Nasar Jan were supplied on 05.3.2021, in compliance with the provisions of Section-265(C) Cr.P.C and all the accused were formally charge sheeted on 11.03.2021, to which they pleaded not guilty and claimed trial.

(7)

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Tehsil Court, Shawa Nasrati
09/11/21

4. Where after, the prosecution was allowed to produce its evidence. The prosecution in order to bring home the guilt of the accused, produced and examined as many as twelve (12) PWs.

5. A brief resume of the prosecution evidence is as under:-

i. PW-1: Anwar Jameel belt # 658, deposed that in his presence Constable Sajid Iqbal belt # 72 brought one sealed phial containing two pieces of lead of spent bullet which was sent by the medical officer, which was sealed into parcel No.04 by the Investigation Officer and affixed three seals containing mark of monogram AA vide recovery memo Ex.PW-1/1. That in his presence, the said constable also handed over the postmortem report along with other relevant documents to the Investigation Officer. As the accused were avoiding their lawful arrest, therefore, warrants u/s 204 Cr.P.C were entrusted to him, went to the localities of the accused Rasool Rahman, Shakil Nasir and Nasar Jan alias Nasir, however, he was told that the accused are avoiding their lawful arrest. In this respect, his report on the back side of the warrant are Ex.PW-1/2 to 1/4. That the proclamation notices of the accused Rasool Rahman and Nasir Jan were also entrusted to him. After completion of process on proclamation notice, he endorsed his reports on the back side which are Ex.PW-1/5 and Ex.PW-1/6. His statement was also recorded by investigation officer u/s 161 Cr.P.C.

ii. PW-02: *Doctor Abid Malook*, Medical Officer deposed that on 05.01.2020 at 10:10 A.M he had conducted autopsy on the dead body of deceased Ajmal Khan son of Shana Mir

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 Tehsil Takht-e-Nasrati
 Harak
 09/11/20

Khan brought by police constable Sajid Iqbal belt # 72. The dead body was identified by Awal Khan and Noor Ali Khan. During his examination, he found the following: -

External Appearance:-

Mark of ligature on neck and dissection etc are Nil.

Condition of subject: - A healthy body with no decomposition and blood stained clothes.

WOUNDS, BRUISES:-

1. Entry wound of about 1/4 x 1/4 size on right side of chest with no exit, just above right areola.
2. Another wound of about 1/2 x 1/4 which is not due to firearm but due to burning, just superior to first wound.
3. Multiple burning marks are present over right side of chest.
4. Entry wound of about 1/4 x 1/4 on left side of chest just above left areola with no exit.
5. Wound of about 1/2 x 1 just near wound No.4, probably due to burning as it has no further entry.
6. Burning marks just lateral and superior wound No.4 & 5.

Cranium and spinal cord are intact.

ABDOMEN:- All intact.

Thorax:-Larynx and trachea are intact while rest injured.

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Examination Branch
 Tehsil Gurdaspur District G.Nasrati
 K. Malik

09/12/21

Muscles, bones, and joints: - are mentioned earlier.

X-ray chest done which shows opacity which correlate bullet. X-ray handed over to the X-ray technician for safe custody and later use.

Probable Time that elapsed;

Between injury and death: within 30 minutes.

Between death and postmortem:- within two hours.

Remarks:- In his opinion deceased Ajmal Khan died due to trauma to vital organs such as heart and lungs leading to excessive bleeding inside and outside of the body secondary to firearm. Postmortem report Ex.PM (consisting of 6 pages) with blood stained garments i.e Shalwar Qameez, Bunyan, sweater and one bottle in sealed condition handed over to constable Sajid Iqbal No.72. He also endorsed the inquest report and injury sheet of the deceased.

iii. PW-03: Yasir belt # 5087 deposed that on 05.01.2020, Baseer Khan S.I handed over to him Murasilla of the instant case, which he delivered in the Police Station to Moharrir Mehboob Khan for registration of FIR. His statement was recorded by the Investigating Officer u/s 161 Cr.PC.

(73)
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 Tehsil Courts, District - Muzaffargarh
 Korak

09/11/20

iv. PW-4: Mehboob ur Rehman IHC deposed that during those days he was posted as IHC at P.S YKS Takht-e-Nasrati. On receipt of Murasila on 05.06.2020 from Baseer Khan SI through constable Yasir belt # 5087 which he correctly incorporated into FIR Ex.PA which is correct and correctly bears his signature. That after chalking of FIR, he handed over its copy alongwith murasila to KBI Staff.

v. PW-5: Sajid Iqbal belt # 72, deposed that he escorted the dead body of deceased Ajmal Khan S/o Shamir, R/o Kaski Banda alongwith injury sheet and inquest report to the doctor at Type C Hospital Takht-e-Nasrati for medical examination. After conducting autopsy on the dead body of deceased, he brought back the Postmortem report alongwith garments and sealed phial to the I.O. The I.O recorded his statement u/s 161 Cr.P.C.

vi. PW-6: Ghani ur Rehman LHC deposed that he is marginal witness to the recovery memo Ex.PW-6/1 vide which, during spot inspection, the Investigation Officer recovered and took into possession 03 empties of 30 bore, freshly discharged in scattered condition from the place of accused Shakeel Nasir which were

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 Officer-in-Charge Branch
 of Police Station Takht-e-Nasrati
 Murak

signed with sharp edge object by the I.O and sealed into parcel # 01, Ex.P-1 and 12 empties of 7.62 bore recovered from the place of Nasir Jan, Rasool Rehman and Mujahid Ali Shah which were laying in scattered condition and the I.O sealed it into parcel No.2, Ex.P-2. That he alongwith I.O was present on the spot when constable Sajid Iqbal No.72 brought the blood stained garments of deceased in shape of Qamees Shalwar, Banyan of white color and a sweater (Harr color) being sent by doctor from Civil Hospital Takht-e-Nasrati. The I.O took it into his possession and sealed into parcel No.3, Ex.P3 vide recovery memo Ex.PW6/2. He was also present with the I.O during house search of the accused but neither the accused was found nor anything incriminating were recovered. In this respect, the I.O prepared house search memo Ex.PW6/3 in his presence. He was present with the I.O when accused Rasool Rehman correctly pointed out the spot. In this respect, the I.O prepared memo of pointation Ex.PW-6/4 in his presence and co-marginal witness. His statement was also recorded by the I.O u/s 161 Cr.PC. According to him, the above referred documents are correct and correctly bear his signatures.

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09/11/22

Branch

Takht-e-Nasrati

vii. PW-07: Baseer Khan S.I, deposed that during those days he was posted as S.I at P.S YKS Takht-e-Nasrati. He was on patrol duty in the area when received information about the arrival of dead body to Civil Hospital Takht-e-Nasrati. So, he alongwith Nafri went to Civil Hospital Takht-e-Nasrati wherein the dead body of deceased Ajmal Khan was present and complainant Mujeeb Ullah reported the matter to him which he reduced in shape of murasila Ex.PA. The murasila was read and explained to the complainant and after admitting the same to be true and correct, he singed the same. He also prepared the injury sheet Ex.PW-7/1 and inquest report Ex.PW-7/2 of the deceased Ajmal Khan and handed over to Constable Sajid Iqbal No.72 alongwith dead body, which he escorted to the doctor for postmortem. He sent the murasila to Police Station through constable Yasir No.5087 for registration of FIR.

viii. PW-08: Noor Ali Khan son of Taj Ali Khan deposed that he identified the dead body of deceased Ajmal Khan before the doctor as well as before the Police in Civil Hospital Takht-e-Nasrati. His statement was recorded by the I.O u/s 161 Cr.PC.

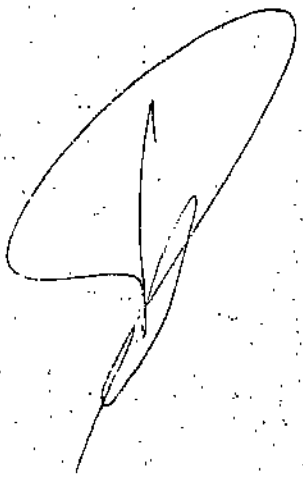
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Tahsil Courts Takht-e-Nasrati
Faisalabad

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ix. PW-09, Mojeeb Ullah (complainant) of the case deposed that deceased Ajmal Khan was his brother. Accused Shakeel Nasir and Mujahid Nasir are brothers interse while accused Nasar Jan and Rasool Rehman are brothers interse. That on the eventful day i.e, 05.01.2020, he alongwith his deceased brother at 07:00 hours had gone to their fields known as Wagai situated at Kaski Banda. There they were cutting Berry tree branches (Dakai). After cutting of the branches, the same were handed over to children for taking it to the house. Thereafter, he alongwith his deceased brothers were busy in cutting grass in the field and at about 08:00 hours, he went to attend the call of nature. After easing himself in the meantime the accused Nasir Khan, Rasool Rehman sons of Sultan Jan, Shakeel Nasir and Mujahid Ali Shah sons of Nasir Jan duly armed with fire arms appeared. The accused Shakil Nasir armed with pistol came near to his brother and asked him as to why he has cut the berry tree. The said accused aimed pistol upon his brother and started firing at him due to which his brother Ajmal Khan got hit, fell down and expired on spot. He ran towards his brother, the accused made firing upon him with intent to commit his murder. From the firing of accused, he

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laid down on the ground and escaped unhurt. All the accused decamped from the spot towards Shawa Nasrati after the commission of offence. Motive for the offence was disputed over landed property and trees. Thereafter, the dead body was shifted to Civil Hospital Takht-e-Nasrati where he lodged the report already exhibited as Ex.PA to the local police. The contents of his report were read over to him and after admitting the same to be correct, he signed it as token of its correctness. Thereafter, he was called to the spot where he pointed out the place of occurrence to the local police and his statement was recorded u/s 161 Cr.PC. He charged the accused for the commission of offence.

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x. Inayat Zaman (Retd. SI) then posted as in Karak Bureau of Investigation (KBI) staff of Police Station Y.K.S (Takht-e-Nasrati) deposed that after registration of case, copy of FIR was handed over to him for investigation. He alongwith KBI staff proceeded to the spot and inspected the place of occurrence. During spot inspection, he recovered and took into possession 03 crime empty shells of .30 bore which were giving smell of freshly discharge and were laying in scattered condition from the place of accused Shakeel Nasir and sealed it into parcel No. 01 already exhibited as Ex.P-1

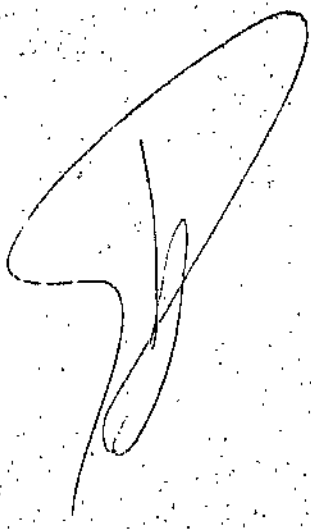
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 Tehsil Courts Takht-e-Nasrati
 Karak

vide recovery memo Ex.PW-6/1. Similarly, vide said recovery memo, he also recovered and took into his possession 12 crime empty shells of 7.62 mm bore near from the places of accused Nasir Jan, Rasool Rehman and Mujahid Ali Shah and sealed the same into parcel No. 02. Thereafter, he prepared site plan Ex.PB at the instance of complainant Mojeeb Ullah. He was present on the spot when in the meantime Constable Sajid Iqbal brought blood stained garments (Ex.P-3) of the deceased Ajmal Khan being sent by doctor, which he took into his possession through recovery memo Ex.PW-6/2. He then recorded the statement of PWs 161 Cr.PC. After spot inspection, he conducted house search of the accused but neither the accused were found there no anything incriminating was recovered therefrom. On his proceeding to Peshawar in connection with Training/Course, he handed over the case in hand to Inspector Saif ur Rehman for further investigation. According to him, the relevant documents are correct and correctly bear his signatures.

ATTACHED
 Examine Copy of Branch
 Tehsil Court Takht-e-Nasrati
 Karak

xi. Saif-ur-Rehman DSP Takht-e-Nasrati, deposed that during the relevant days and time he was posted as In-charge KBI at Police Station Y.K.S Takht-e-Nasrati.

On the eventful day, he alongwith KBI staff proceeded to the spot where Inayat Zaman SI was busy conducting investigation of the instant case who handed over the case file to him for investigation. After perusal of the case file, he snapped photographs, 13 in number Ex.PW-11/1 to Ex.PW-11/13 (STO) from the spot as well as at the time of spot pointation by the complainant. After getting free from spot, he returned back to Police Station when Constable Sajid Iqbal # 72 brought one phial containing two pieces of spent bullet sent by doctor alongwith Post Mortem papers and he took into his possession two pieces of spent bullets vide recovery memo Ex.PW-1/1. Thereafter, he recorded the statements of marginal witnesses of the recovery memo and Moharrir of the Police Station and other relevant PWs. He also issued docket Ex.PW-11/14 regarding change of section of law. He also prepared the list of legal heirs of deceased Ajmal Khan. That the accused Mujahid Nasir obtained bail before arrest from this Hon'ble Court, so he formally arrested the said accused and issued his card of arrest. The co-accused Nasir Jan, Shakil Nasir and Rasool Rehman were avoiding their lawful arrest, so he vide application Ex.PW-11/15 applied for issuance of



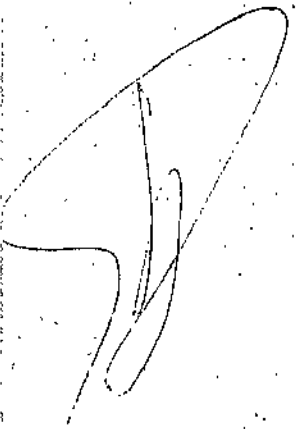
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 Karan

09/11/22

warrants u/s 204 Cr.PC against them and in the meantime, the accused Shakil Nasir obtained bail before arrest from this Hon'ble Court and he arrested him by issuing his card of arrest. After obtaining the bail before arrest by accused Shakil Nasir, he vide application Ex.PW-11/16 requested to learned area Judicial Magistrate for issuance of proclamation notice only against accused Rasool Rehman and Nasir Jan. As the statutory period of submission of complete challan in the instant case was completed so he submitted interim challan against all the accused. He also obtained CDR of the accused Shakil Nasir and Mujahid Ali Shah, the CDR data available on file is Ex.PW-11/16 (consisting upon 16) pages. (STO). As per CDR of accused Shakil Nasir, on the eventful day, his location was shown at Takht-e-Nasrati. In the meantime, accused Rasool Rehman was arrested by SHO and was handed over to him for interrogation so on the following day i.e. 26.01.2020, he produced him before learned area Magistrate for obtaining physical custody vide application Ex.PW-11/17, which was allowed and one day physical custody of said accused was granted. He interrogated the said accused who confessed his guilt before him and pointed out the

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 Karak

place of occurrence to him and to this effect pointation memo Ex.PW-11/18 was prepared. He snapped 09 photograph from the said accused which are Ex.PW-11/19 (consisting upon 09 photographs). He also verified the site plan with red ink through said accused. On 27.01.2020, he again produced the accused Rasool Rehman before learned area Judicial Magistrate for obtaining further custody vide application Ex.PW-11/20 but his request was turned down and accused was remanded to judicial lock-up. He also placed on file FSL reports Ex.PZ & Ex.PZ/1 regarding blood stained articles and crime empty shells. On 13.2.2020, the bail before arrest petition of accused Shakil Nasir and Mujahid Nasir was recalled and he arrested them by issuing their card of arrest which is Ex.PW-11/21. On 14.2.2020, he produced both the accused Shakil Nasir and Mujahid Nasir vide application Ex.PW-11/22 for obtaining their physical custody whereupon two days custody was granted. He interrogated them who confessed their guilt to him and volunteered for pointation of the place of occurrence so he prepared pointation memos Ex.PW-11/23 & Ex.PW-11/24 to this effect and also verified the site plan from both of the accused through entry ink on the back of site plan.

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He recorded the statements of both the accused and on 16.2.2020, he produced them before the Learned Judicial Magistrate for recording their confessional statement u/s 164/364 Cr.PC but both the accused refused their guilt and were sent to Judicial Lock-up and case file was handed over to SHO Rehmat Ullah for submission of challan who accordingly submitted challan against the accused. After the arrest of accused Nasir Jan by the SHO Rehmat Ullah, he was handed over to him for interrogation and on 03.3.2020, I produced him before learned Judicial Magistrate and thereafter he was transferred from Police Station Y.K.S. He has also recorded the statements of PWs u/s 161 Cr.PC. According to him, the relevant documents are correct and correctly bear his signatures.

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xii. Rehmat Ullah SI, deposed that during the relevant days he was posted as SHO at Police Station Y.K.S (Takht-e-Nasrati). On 02.3.2020, he arrested the accused Nasar Jan and issued his card of arrest, which is Ex.PW-12/1 and handed over the said accused to KBI staff for investigation. After completion of investigation, he submitted supplementary challan against the accused. He has also submitted complete challan against the accused. That SHO Kariman Ali

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also submitted interim challan against the accused facing trial Shakil Nasir and Mujahid Nasir. He verified the handwriting and signatures of said SHO being his colleague. According to him, the above referred documents are correct and correctly bear his signatures as well as that of SHO Kariman Ali.

6. After close of Prosecution evidence, statements of accused were recorded under Section-342 Cr.P.C wherein they alleged *mala fide* and professed their innocence. The accused neither wished to produce evidence in defense nor opted to be examined on oath.

7. I have heard the arguments of learned counsel for the parties and Dy.PP for State.

8. The time of occurrence is claimed in the contents of murasila and FIR as 08:00 hours and the time of lodging report and that of chalking out of FIR is respectively claimed as 09:00 and 09:30 hours. The contents of FIR also suggest that the complainant Mojeeb Ullah parted his ways with the deceased at about 08:00 hours for the purpose of discharge of urination and after easing himself, he started proceeding towards his brother and there he noticed emerging the accused Nasir Jan, Rasool Rehman sons of Sultan, Shakeel Nasir and Mujahid Ali Shah sons of Nasir

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Khan duly armed. Out of the above noted accused, accused Shakeel Nasir who was duly armed with pistol came to the deceased and said that why you are cutting the branches of their trees and also aimed pistol and started firing upon the deceased Ajmal Khan, as a result Ajmal Khan got hit and fell on the ground and died on the spot. Thereafter, the complainant immediately started proceedings towards his brother and all the accused resorted to firing upon him with the intention to cause his death. The complainant in order to save his life, lay down on the ground and remained unhurt while all the accused made their escape good from the spot.

(85)

In cross examination, the complainant admitted that he consumed 02/03 minutes on discharge of urination. His this statement negates the time of occurrence. At another place in cross examination he deposed that the people were attracted to the spot at 08:30 hours. Baseer Khan (PW-05), who lodged the report inside the casualty of Takht-e-Nasrati hospital, in cross examination had deposed that in column # 03 of the inquest report Ex.PW-7/2, he has mentioned the time of death of the deceased as 08:30 hours and the same time was told to him by the complainant. Again this statement nullify the contents of murasila, FIR and that of the complainant regarding the time of death of the deceased as it is specifically mentioned in the contents of murasila

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that after firing, the deceased fell on the ground and died on the spot.

10. From above, it is crystal clear that the prosecution has miserably failed to prove the time of death of deceased Ajmal Khan as claimed in the FIR.

11. The contents of FIR also provide that the complainant and the deceased cut the branches of berry tree and the same were handed over to the kids and for that purpose they were equipped with axe meant for cutting the branches and a Chaddar for collecting the cut branches. The complainant in cross examination had frankly conceded that neither the axe nor the Chaddar were pointed out to the Investigation Officer. He explained that the axes were taken by the kids with themselves while the Chaddar along with the cut grass remained on the spot, however, the same is taken into possession through any recovery memo as admitted by PW-10 Inayat Zaman.

12. As stated earlier that the time of lodging report inside emergency room of THQ Hospital Takht-e-Nasrati is 09:00 hours and time of lodging of FIR is 09:30 hours. As per the complainant on their arrival to hospital, the local police were already present. Similarly, doctor was also present in the emergency room at their arrival. Baseer Khan, scribe of

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Tehsil Chungi, Takht-e-Nasrati
Karnal

the report, who appeared as PW-07 has testified that he was on the patrolling of the area when received information about the occurrence and on his arrival, the dead body of Ajmal Khan was already present inside the hospital. At another place in cross examination he deposed that the dead body was brought to hospital a few minutes prior to his arrival to the hospital.

13.

The doctor Abid Malook who conducted post mortem on the dead body of deceased Ajmal Khan appeared as PW-02 and deposed that he started conducting post mortem on the dead body of deceased at 10:10 a.m. In cross examination he deposed that the injury sheet was handed over to him 05 minutes prior to commencement of post mortem meaning thereby that the dead body was produced before him at 10:05 a.m. His this statement negates the prosecution version that soon after lodging of report in shape of murasila and preparation of injury sheet and inquest report, the dead body was referred to doctor for conducting post mortem report. PW-09 Mojeeb Khan (complainant) in cross examination has testified that first he made the report and then police produced the dead body before the doctor for examination and this process might have consumed 15 to 20 minutes. Yasir Khan (PW-03), who transmitted the murasila to Police Station for

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Tehsil Court, Bahawalpur-Nagrani
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registration of FIR, left the hospital alongwith murasila at 09:15 hours. It means that by that time, the murasila was drafted and injury sheet and inquest report of the deceased were prepared as the same facts reflected in the contents of murasila. Here a question arises that when the above proceedings were completed before 09:15 hours then why the dead body of the deceased was received alongwith injury sheet by the doctor at 10:05 a.m. The prosecution has failed to explain the time elapsed between lodging report and referring the dead body to doctor.

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14. The statements of the PWs are not in consonance with each other with regard to number of injuries found on the dead body of deceased Ajmal Khan. No doubt the injury sheet Ex.PW-7/1, was prepared by Baseer Khan. The same witness examined the dead body and found two wounds on the dead body, while per post mortem report, there were 06 wounds on the dead body of the deceased.

15. In the contents of FIR, the accused Shakeel Nasir has been shown to have been armed with pistol. In site plan points 03 & 03-A is given to the said accused. From point-03, he started proceeding towards the deceased who was standing at point 01 and then he reached to point 03-A where he aimed his pistol upon the deceased and started

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firing as a result the deceased got hit and fell on the ground. The complainant narrated the same stance in his statement. Baseer Khan has not only negated the contents of FIR but also contradicted the complainant by deposing in cross examination "the kind of weapon is shown as Asleha Atisheen without description of kind of weapon in murasila".

16. Apart from above, it is also admitted fact that there is no verifier of the murasila report. If it is presumed that none from the complainant was present inside the emergency room of hospital at the time of lodging report, to stand verifier of the murasila report lodged by the complainant, then the same must have been verified by the police official, however, this mandatory provision of law has been violated in the instant case.

17. The complainant in his cross examination has admitted that for the first time he noted all the accused from a distance of 115 paces while he was also noticed by all the accused and as soon as he started proceeding towards his brother who was already fired upon, all the accused made firing upon him and he took shelter by laying on the ground, however, he escaped unhurt. In cross examination he deposed that all the accused made 10/12 fire shots upon

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Tehsil Courts Faiz-e-Nasrati
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him. Per narration of site plan the complainant was at point "2" for the purpose of discharging urination while he witnessed the occurrence from point 02-A and at point 02-B, he took shelter. No crime empty shell is recovered from point 2-A or 02-B and there is no obstacle obstructing the view between the places of accused and that of the complainant. All the accused were duly armed with *Asleha Atisheen* and they made firing simultaneously but very strangely, the complainant escaped unhurt by not receiving a single injury. More so, it has also been not explained that when the complainant was at the mercy of the assailant then why he was spared so as to stand witness against them.

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18.

The site plan which was prepared at the instance of complainant on the eventful day by the Investigation Officer would show that initially the accused Shakeel Nasir was at point-03 duly armed with pistol. From point 03, he started proceeding towards point 01 where the deceased was present; covered the distance and reached to point 03-A and there he aimed pistol upon the deceased and started firing upon him. The narration of site plan Ex.PB depicts that no blood is recovered from point 01 of the deceased. Similarly, from point 03-A, 03 crime empty shells of .30 bore have been recovered. All the remaining three accused were armed with Kalashnikovs and never came to the place of



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Karak

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30 empty shells

deceased. In the contents of murasila, it is claimed that the deceased was only fired upon by the accused Shakeel Nasir while he alongwith the other remaining 03 accused are charged for launching murderous assault upon the complainant and the complainant remained unhurt. In the site plan, no intervening distance is given between point 03-A and 01. This fact is admitted by the Investigation Officer in his statement. Out of the six (06) wounds found on the body of deceased, wounds # 02, 03, 05 & 06 are burning wounds. More so, the size of injuries # 01 & 04 are 1/4 x 1/4 inches while the size of injuries # 02 & 05 are respectively 1/2 x 1/4 inches & 1/2 x 1 inch. The same fact is admitted by doctor in his cross examination. Though he has negated the suggestion that the same was caused through different caliber of weapons, however, when a single person is charged for effective firing who has been shown armed with pistol then difference in size of injuries found on the dead body makes the case of prosecution doubtful. At the same breath non-mentioning the intervening distance between point 03-A & 01 is also fatal for prosecution case for the reason that in absence of same it cannot be said with certainty that the deceased was fired from close proximity.

(91)

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19.

The doctor has also admitted in his cross examination that one piece of bullet was extracted from the body of

deceased but at the same breath he has admitted it correct that extraction of foreign body is not mentioned in the post mortem report.

20. There is another aspect of the case regarding conduct of investigation. On the eventful day soon after registration of FIR, the investigation was conducted by PW-10 Inayat Zaman, In cross examination he has deposed that FIR was handed over to him at 09:40 a.m and thereafter he proceeded to the spot and reached within 15 to 20 minutes. He consumed 01/ 01 ½ hours on the spot proceeding. During this period, he inspected the spot, prepared site plan Ex.PB, recovered 03 crime empty shells of .30 bore and 12 crime empty shells of 7.62 mm bore vide Ex.PW-6/1 and took into possession blood stained garments of deceased vide recovery memo Ex.PW-6/2. He also recorded 161 Cr.PC statement of the complainant. IN cross examination he admits that he remained Investigation Officer of the case for a single day. He also admits that no corresponding cut marks were noticed by him on the blood stained garments of the deceased. On the eventful day, the DSP Saif ur Rehman who was then In-Charge of the Karak Bureau of Investigation (KBI) assumed the charge of investigation of the instant case. In his in-chief he has deposed that on the eventful day he alongwith KBI staff proceeded to the spot

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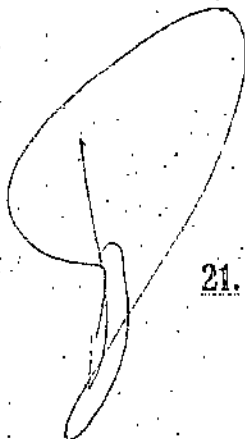
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Tehsil Court, Tehsil-Nasrabad
Karak

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where Inayat Zaman SI (PW-10) was present and busy in conducting investigation proceeding. Inayat Zaman SI handed over him the case file and he started conducting investigation in the case. DSP Saif ur Rehman (PW-11) in cross examination has frankly conceded that the investigation of the case was not handed over by him to Inayat Zaman (PW-10). The record is silent about the entrustment of investigation of the case to Inayat Zaman. Similarly, there is nothing available on file to suggest that Inayat Zaman was withdrawn to be investigation officer of the instant case nor it is brought on record that he was transferred out. When Inayat Zaman SI was not entrusted with the investigation then the proceeding conducted by him in absence of any authorization is illegal.

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21.

It is admitted fact that Inayat Zaman SI after handing over of FIR at 09:40 hours proceeded to the spot and reached there within 15 to 20 minutes and further remained on the spot in connection with the investigation for 01 or 01 1/2 hours. DSP Saif-ur-Rehman (PW-11) in cross examination has deposed that he got knowledge about the occurrence at about 14:00 hours when he was busy in a meeting in the DPO Office Karak. He has not disclosed the source of receiving information and per him, he left the office of DPO Karak at 14:15 hours and straight away

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rushed to the spot and reached there at about 17:00 hours and found Inayat Zaman SI busy in conducting investigation. Per Inayat Zaman SI he remained on the spot at the most till 11:00 or 11:30 hours then how the DSP found him on the spot at about 17:00 hours. More so, DSP also admits that the case file was handed over to him by Inayat Zaman on the spot and the inspection of the spot was carried out on the instance of Inayat Zaman SI.

22.

The motive for the offence, which is introduced to be dispute over land is stand proved. In this respect the statement of the complainant that he alongwith his brothers has got dispute over land with accused party and that of the other PWs confirming his version are of worth perusal. More so, the contents of FIR also clearly mentions the motive. Similarly, the blood stained garments of the deceased and positive FSL report regarding the blood group, post mortem report do establish that the deceased met unnatural death, however, these circumstantial and corroborative evidence is of no benefit to the prosecution as the ocular account is not found trustworthy, confidence inspiring and reliable.

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Examiner of Police Branch
Tehsil Court, District Muzaffargarh

09/11/22

23.

All the above referred facts led the Court to irresistible conclusion that the occurrence has not taken

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place in the mode and manner as claimed in the contents of murasila report. Apart from above, the statement of the complainant and that of the other material witnesses are found to be full of grave inconsistencies on major points, hence, the Court has no hesitation to hold that the prosecution has miserably failed to discharge their onus by bringing home the guilt of accused beyond any reasonable shadow of doubt. hence while extending benefit of doubt, the accused namely Nasar Jan, Malak Rasool Rehman sons of Sultan Jan, Shakeel Nasir and Mujahid Nasir alias Mujahid Ali Shah sons of Nasar Jan, residents of Shawa Nasrati, Kaski Banda, Tehsil Takht-e-Nasrati District Karak, are hereby, acquitted of the charges leveled against them in case FIR # 06, Dated: 05.01.2020, under Section 302/324/34 P.P.C, Police Station Y.K.S (Takht-e-Nasrati). Accused Shakeel Nasir is in custody, he be set free forthwith if not required in any other case(s) while accused Nasar Jan, Malak Rasool Rehman and Mujahid Nasir alias Mujahid Ali Shah are on bail, therefore, they are relieved and their sureties are discharged from the liabilities of bail bonds.

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Examiner of Police Branch
Tehsil Courts, Takht-e-Nasrati

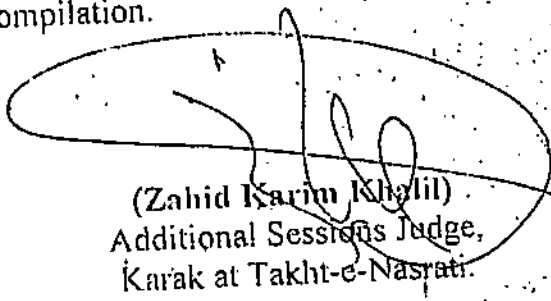
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24. Case property be kept intact till the expiry of period of Appeal/Revision and thereafter be disposed-of in accordance with law.

25.

A copy of this order be placed on police/judicial file, while file of this Court be consigned to the record room after its completion and compilation.

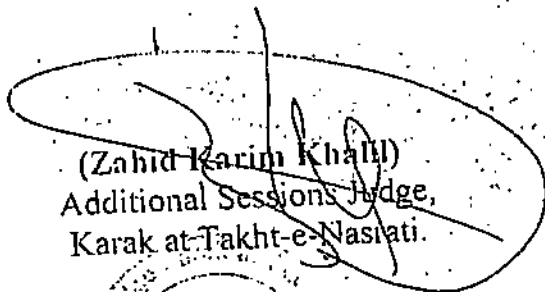
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11.11.2022

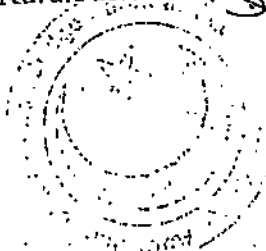

(Zahid Karim Khalil)
Additional Sessions Judge,
Karak at Takht-e-Nasrati.

CERTIFICATE

Certified that this judgment consists of (29) pages, each page has been read and signed by me after making necessary corrections.

Announced
11.11.2022


(Zahid Karim Khalil)
Additional Sessions Judge,
Karak at Takht-e-Nasrati.



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Exam for Copy of Branch
Tehsil Court Takht-e-Nasrati
Karak

09/12/22

C.F. No. 2921
Date of Presentation of Application 19/11/22
Number of Words 3/ou & map
Date of Completion of Copy 09/12/22
Date of Delivery of Copy 9/12/22
Date of Despatch of Copy 9/12/22
Date of Service of Notice 9/12/22

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12-12-22

To

The Additional Inspector General of Police (Special Branch),
Khyber Pakhtunkhwa, Peshawar.

Subject: Request for restoration of last service by re-instatement in service order

Respected Sir,

Petitioner very humbly submits as follows.

- 1) That petitioner which is serving special Branch Police as constable was implicated in criminal case FIR 06 dated 05/10/2020 under section 302, 324, 148 149 PPC police station Yaqoob Khan Shaheed (YKS) Takht e Nasrati District Karak.
- 2) That petitioner was taken into judicial custody and was out on trial before Additional Session Judge Takht e Nasrati and after prolong trial was acquitted vide order dated 11/11/2022 copy of judgment is enclosed for perusal.
- 3) That petitioner was dismissed from service vide order of SSP admin Special Branch dated 25/06/2020. The departmental appeal was rejected by DIG Special Branch vide order dated 04/08/2020.
- 4) That the enquiry officer didn't include statements of the Special Branch staff and private locals as my evidence of being on duty in Tehsil Thall, District Hangu on the day criminal case. Which is injustice.
- 5) That the enquiry officer didn't allow the petitioner for cross questions during his question session with KBI Officer.
- 6) That the petitioner was not being called for explanation by SSP Special Branch before dismissal from service.
- 7) That the enquiry officer didn't mention any evidence in the enquiry file regarding the petitioner involvement in the criminal case.
- 8) That on acquittal from criminal charge in the court of the Additional Session Judge Takht e Nasrati dated 11/11/2022, petitioner is also entitled for restoration of last service by re-instatement in service order.

It is therefore requested in your honor that the petitioner may kindly be restored to his last Service by re-instatement in service order, please.

Dated: 12/12/2022

Yours obediently,

~~Legal Branch~~

For MIA / PAB / MIA
PAB sheet on legal branch

~~SSP~~

SSP/A

12/12/22

M. Ullah / Deputy

12/12/22

~~Shakeel Nasir~~

Shakeel Nasir
Ex-constable No. 169,
CNIC: 14203-3222435-1
Cell No: 0336 0056007

PA / SSP / MIA

بعدالت جناب سرسٹریٹ ٹریڈ ہونٹل صوبہ سندھ پشاور

منجانب ایڈوائس

شمارہ ۱۰۰۰

شکیل ناصر
دعوی اپیل

باسمہ تحریر شدہ

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مقررہ مندرجہ عمران بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آل مقام پشاور کیلئے سید احمد خان سے وکٹ، ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موقوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے یا دوسری نامہ و آفٹر ثالث و فیصلہ برتلاف دینے جواب دہی اور اقبال دعویٰ اور لہذا وکٹ کر کے اجراء اور دعویٰ چیک در پیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز لہذا عدم پیروی یا وکٹ کی طرف یا اپیل کی برآمدگی اور سزا وغیرہ دینے پر اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور لہذا ضرورت مقدمہ بنا کر کے کل یا ہجرتی کاروائی سے واسطے اور وکیل یا مقرر قانونی کو اپنے ہمراہ یا اپنی بجائے تفریق کا اختیار ہوگا اور وہ اپنے مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واضح منطوق قبول ہوگا اور دوران مقدمہ میں جو شرحہ و ترجمانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موقوف ہوں گے نیز لہذا دفعہ پہلی و صوبہ کی وکٹ کر کے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ پر ہو یا عدسے باہر ہو تو وکیل صاحب یا ہجرت نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا کالت نامہ رکھ دیا کہ سند ہے۔

الرقوم ۰۳-۰۵-۲۳

التبید التبد التبد

۱۱
ارباب نیف اتمال
ایڈووکیٹ

Shahid Khan
سید الشہید خان شریعت
ایڈووکیٹ

Shaham

۱۱
محمد نواز
ایڈووکیٹ