

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No: 222/23.

Nisar Ali VS IG Prison etc

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4975

Dated 26/4/2023

APPLICATION FOR PLACING ON FILE THE
RELEVANT DOCUMENTS/JUDGMENT IN
THE INSTANT CASE.

Respectfully Sheweth:

That the appellant submit as under;

- 4- That the above titled case is pending before this Hon' able Court/Tribunal in today date i.e 26, April, 2023.
- 5- That Judgment/Documents are necessary part of the case, and are relevant to the case.
- 6- That there is no legal bar to accept it and placing on file the said Judgment.

It is therefore requested that the annexed documents may kindly be placed on file.

Dated 26/04/2023



Amjid Ali Khan
Advocate High Court Peshawar

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IN THE COURT OF BADDAR UL HAQ,
JUDICIAL MAGISTRATE-IV, PESHAWAR


FIR No. 277 Dated 22/4/2022 u/s 223/224 PPC of
Police Station Sharqi, Peshawar

FORMAL CHARGE

I, **Baddar Munir**, Judicial Magistrate-IV, Peshawar, do hereby charge all of you accused namely Nisar Ali s/o Saeed Ur Rehman, Nawab Ali s/o Shamsher Ali, Kashif s/o Fazal, Rooh Ullah s/o Shakir Ullah and Ali Akbar s/o Bakht Muhammad charged in above referred FIR as follows:-

That on 22/4/2022 at about 1630 hours, at MPA Hostel, falling within the criminal jurisdiction of Police Station Sharqi, all of you accused named above as security squad was committed negligent act and found irresponsible which resulted ⁱⁿ the escape of under trial prisoner namely Faisal Zaman (MPA) from Sub Jail at the time of yours duty thus, you thereby committed an offence punishable u/s 223/224 PPC and within my cognizance.

I directed you to be tried for the above charge within my cognizance.


Baddar Munir
Judicial Magistrate-IV,
Peshawar.

Note:- 

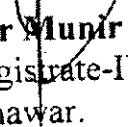
The charge was read over and explained (In Urdu/Pushto) to the accused.

- Q. Do you have heard the charge?
A. Yes.
Q. Do you plead your guilt?
A. We do not plead guilty and claim trial.

Accused:-

Nisar Ali s/o Saeed Ur Rehman, Nawab Ali s/o Shamsher Ali, Kashif s/o Fazal, Rooh Ullah s/o Shakir Ullah and Ali Akbar s/o Bakht Muhammad.

Certified Under Section 164/364 Cr.P.C


Baddar Munir
Judicial Magistrate-IV,
Peshawar.

FIR No. 277 Dated 22/4/2022 u/s 223/224 PPC of Police Station East Cantt,
Peshawar

IN THE COURT OF BADDAR MUNIR,
JUDICIAL MAGISTRATE-IV, PESHAWAR

Or...13:-
30/01/2023

APP for the State present.

All the accused namely Nisar Ali s/o Saeed Ul Rahman, Nawab Ali s/o Shamsher Ali, Kashif s/o Fazal, Rooh Ullah s/o Shakir Ullah and Ali Akbar s/o Bakht Muhammad present on bail.

Co-accused namely Faisal Zaman s/o Muhammad Usman and Muhammad Khursheed s/o Abdul Rasheed still absconding.

Arguments on application u/s 249A Cr.P.C filed by the accused/petitioners on bail heard and record perused.

Per the contents of FIR, it revealed that the absconding accused namely Faisal Zaman s/o Muhammad Usman MPA being charged in the FIR bearing No. 07 Dated 14/9/2020 u/s 302/324/427/34 PPC r/w 7AA of Police Station CTD, Hazara was under the judicial custody and was brought to Peshawar for attending the Assembly Session on production order, whereof, the Room No. 11 Block-D of MPA Hostel, Peshawar was declared as Sub-Jail. The staff of Jail consisting upon Nisar Ali Assistant Superintendent (Incharge Sub Jail), Nawab Ali Chief Head Warder, Kashif Warder, Roohullah Warder and Ali Akbar Warder i.e accused facing trial were deputed at that sub Jail to look-after/hold the custody of absconding accused Faisal Zaman, however, due to negligence of accused facing trial being public servant, with the connivance of other co-accused namely Muhammad Khursheed s/o Abdul Rasheed (still absconding), the absconding accused namely Faisal Zaman s/o Muhammad Usman made escape from his lawful custody, hence, instant FIR was registered against the accused on bail as well as absconding co-accused.

True that the absconding accused Faisal Zaman s/o Muhammad Usman being charged in another case FIR bearing No. 07 Dated 14/9/2020 u/s 302/324/427/34 PPC r/w 7AA of Police Station CTD, Hazara was under the lawful custody and was confined at MPA Hostel, Peshawar (sub Jail), however, here the point of consideration is that whether the accused facing trial being public servants were deputed to hold the custody of absconding accused or otherwise, thus, after deep scrutiny of the record, this court holds

ATTESTED

12 / 1 / 2023


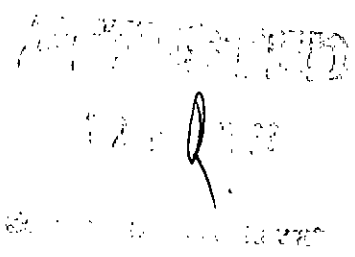
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that there is nothing available on file in written form which may show that the accused facing trial being public servants were deputed to hold the lawful custody of absconding co-accused at the time of his escape. No order etc regarding the deployment of accused facing trial issued by Superintendent Jail or any competent authority is there on record even no plausible explanation has been endorsed by the complainant in order to substantiate that the accused facing trial being public servants were bound to hold the custody of absconding accused namely Faisal Zaman, whose lawful apprehension was required, thus, the case of prosecution to the extent of accused facing trial seems very weak from its roots.

No entry order/date of the absconding accused Faisal Zaman in the Sub Jail/MPA Hostel is there on record. Five (05) accused i.e government officials were charged in the instant case who were stated to be deputed for the lawful apprehension of absconding accused Faisal Zaman at sub jail/MPA Hostel, however, no specific role as been attributed to any of the accused in order to disclose the fact that at the time of escape of absconding accused Faisal Zaman, who was on duty. No duty roaster is available on file which fact cast doubt in the mode and manner of charging all the accused for single offence u/s 223 PPC.

Resultantly, in the above circumstances, coupled with absence of any departmental order regarding constitution of police officials/jail squad/accused facing trial being the lawful custodian of absconding accused (whose apprehension was required in another case), from where alone, the stance of prosecution can be established that all the accused facing trial were bound to hold the custody of absconding accused Faisal Zaman and were on duty at the time of alleged occurrence. At the time being, the burden of negligent on the part of all the accused facing trial cannot be established if the entire evidence is recorded hence, this court is of the view that the prosecution case is very weak from evidentiary point of view, thus this court while invoking the provisions of section 249-A r/w 63 Cr.P.C, acquits/discharge the accused facing trial namely Nisar Ali s/o Saeed Ul Rahman, Nawab Ali s/o Shamsheer Ali, Kashif s/o Fazal, Rooh Ullah s/o Shakir Ullah and Ali Akbar s/o Bakht Muhammad are acquitted/discharge from the charge u/s 223 PPC leveled against them in the present case.

They are on bail, hence, bail bonds furnished by them are cancelled and sureties there under are absolved from their liabilities.

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FIR No. 277 Dated 22/4/2022 u/s 223/224 PPC of Police Station East Cantt,
Peshawar

Contd...13
30/01/2023

As far as the case to the extent of absconding co-accused namely Faisal Zaman s/o Muhammad Usman and Muhammad Khurshid s/o Abdul Rasheed for the offence u/s 224 PPC is concerned. Today the DFC namely Tariq of Police Station East Cantt, presently posted at Police Line Investigation Wing, Peshawar appeared before the court and recorded his statement as Sw-01. In his statement, he admitted that the absconding accused whose apprehension is required in the instant case with the addition that absconding co-accused namely Faisal Zaman s/o Muhammad Usman is also charged in another connected case of FIR bearing No. 07 Dated 14/9/2020 u/s 302/324/427/34 PPC r/w 7ATA of Police Station CTD Hazara are avoiding their lawful arrest, untraceable on the given address therefore, in the light of statement given by the DFC Police Station concerned, this court is of the view that prima fascia case for the offence u/s 224 PPC exist to their extent and the guilt to the extent of absconding co-accused stand proved.

Thus, absconding co-accused namely Faisal Zaman s/o Muhammad Usman and Muhammad Khurshid s/o Abdul Rasheed are declared as proclaimed offenders.

Their names be entered in the list of proclaimed offenders. SHO Police Station concerned to execute the warrants issued against the absconding co-accused in shortest possible time.

Their CNICs stand blocked till further orders of the court and separate notice be issued to DG NADRA for compliance and report.

Muharrir to do the needful.

Case property, if any be disposed of in accordance with law.

Judicial file be consigned to record room after is necessary completion and compilation while police file be returned.

Order Announced Today

30/01/2023

(Baddar Munir)
Judicial Magistrate-IV,
Peshawar

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CERTIFICATE
Copy to
Peshawar