

Form No.HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT
CrI.Misc.No.190071-B/2018

MUHAMMAD KHALID, ETC.
VS
THE STATE, ETC.

Sr. No. of order/ proceedings	Date of order/ proceedings	Order with Signature of Judge, and that of parties of counsel, where necessary.
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04.07.2018

Ch. Muhammad Ali, Advocate with petitioners.
Ch. Anwaar ul Haq Pannu and Nosheen Ambar,
Advocates for the complainant.
Mr. Muhammad Amjad Rafiq, Additional Advocate
General and Usman Iqbal, Deputy Prosecutor General.
Mr. Muhammad Hammad Khan Rai, Assistant Advocate
General, Barrister Haaris Ramzan, Legal Advisor ,
Primary & Secondary Health Care Department and
Muhammad Hussain Sub-Inspector.

Petitioners(Muhammad Khalid, Shafaqat Hussain and Muhammad Iftikhar) seek pre-arrest bail in case FIR No.138/2018 dated 20.02.2018 under sections 337-A(i), 337-(iii), 337-L(ii) PPC registered at police station Saddar Gujranwala.

2. **This petition to the extent of Shafaqat Hussain (petitioner No.2) has already been dismissed due to non-prosecution vide order dated 21.05.2018.** It has been observed that Shafqat Hussain (petitioner No.2) had also filed a separate pre-arrest bail application (CrI.Misc.No.220756-B/2018) in the same case, and the same has also been dismissed vide a separate order of even date on the ground of misuse of concession.

3. As regards, Muhammad Khalid, he has been assigned a joint role along with Iftikhar Ahmad, Shafaqat Hussain, Ahmad and three unknown assailants that they entered the house of the complainant while carrying *DANDAs*, hurled abuses, extended threats, maltreated Mst. Samina Bibi and Fatima Bibi, all the accused inflicted fist, kick and *Danda* blows to Mst. Samina and dragged her outside the house. As shall be seen from the allegations leveled in the FIR the petitioner along with co-accused has been attributed general role without any specific injury by the petitioner to the victim. Previous family and civil litigation between the parties exists.

Shafaqat Hussain co-accused of the petitioner is stated to be 50% owner of the disputed house and his wife is living therein, whereas, applicability of offence under section 452 PPC will be seen at the trial after recording of evidence. As cumulative effect of above, considering the background of hostility between the parties, in the light of case "MEERAN BUX versus THE STATE and another" (PLD 1989 SC 347), possibility of petitioner's false implication in this case as a result of widening the net cannot be ruled out. Consequently, **this application to the extent of Muhammad Khalid (petitioners No.1) is allowed, interim pre-arrest bail granted to him is hereby confirmed subject to furnishing fresh bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of learned trial court.**

5. Coming to the case of Muhammad Iftikhar (petitioner No.3), he is nominated in the FIR with a specific and distinguishable role of inflicting fist blow on the nose of Mst. Samina Bibi, injured daughter of the complainant. The role ascribed to Muhammad Iftikhar (petitioner No.3) attracts Section 337-A(iii) PPC, the same is supported by the ocular account and corroborated by medical evidence. Therefore, I see no justifiable reason to the grant of extra ordinary concession of pre-arrest bail to him. **Consequently, bail application to the extent of Muhammad Iftikhar (petitioner No.3) is dismissed.**

4. During the course of hearing, one of the ground agitated for confirmation of pre-arrest bail was that on a move by the petitioners, the Ilaqa Magistrate had order constitution of District Standing Medical Board, where the complainant/injured did not appear, therefore, an inference against the injured had to be drawn and benefit thereof must be extended to the petitioners. It has been observed that even prior to this case, in so many petitions grievances were raised by the respective parties that although on their move District Standing Medical Board was constituted but the injured were not informed about it and in some cases even the police officials admitted that they had not informed the injures about formation of the District Standing Medical Board or about the date fixed by the said board for reexamination. In order to settle this situation

the AIG (Legal) was summoned, who submitted his detailed report with reference to SOP, a copy whereof is tagged below:-



**OFFICE OF THE
INSPECTOR GENERAL OF POLICE
PUNJAB, LAHORE.**

To i. The CCPO Lahore.
ii. All CPOs in Punjab.
iii. All DPOs in Punjab.

No. 10886 /Inv/HA/L

Dated: 15-5-2018

Subject: **CRL. MISC. NO.198841-B OF 2018 TITLED AS MUHAMMAD SARWAR VS THE STATE AND ANOTHER. FIR NO.648/17 DATED 12.10.17 U/S 336/337-L2/34 PPC PS SADDAR DISTRICT SIALKOT.**

Kindly refer to the U.O No.8710/Legal-29W/2018 dated 14.5.18 alongwith letter of Dy. Registrar Lahore vide No.034248/CrI-II(CCB-I & II) dated 10.5.18 and order of Hon'ble Court dated 4.5.18 received from AIG/Legal on the subject cited above.

2. The titled CrI. Misc. came up for hearing before the Hon'ble Lahore High Court Lahore on 4.5.18 in which the Hon'ble court observed as under:-

"2. From the perusal of report dated 7.2.18 it has transpired that neither the injured, nor police or medical officer appeared before the District Medical Board Sialkot on two consecutive dates. The above situation shows that the medical board was constituted but it could not be able to form its opinion as the police did not inform the injured as well the medical officer to appear before the medical board.

2. Let any senior officer on behalf of IGP Punjab appear before this court by formulating the complete plan being circulated in all the Districts for compliance of the orders of the District Standing Boards.

3. The Secretary, Primary Health Care, Punjab as well as the Secretary Secondary Health Care, Punjab shall also appear alongwith their suggestions on the next date of hearing so that the process of re-examination of the injured can function smoothly.

4. To come up on 16.5.18. Dy. Registrar shall ensure the compliance of the order of this court."

3. On perusal of the order of Hon'ble Court, it reveals that police officials of PS Saddar Sialkot did not inform all the concerned regarding their appearance before the District Standing Medical Board despite directions of the said board. Non compliance of lawful orders by police officials of PS Saddar Sialkot brought bad name and caused embarrassment to the Police Department.

4. The Hon'ble Division Bench has took serious notice of the matter and directed to formulate a complete plan being circulated in all the districts for compliance of the orders of the District Standing Boards.

5. The observations of the Hon'ble Court are serious in nature and needs your prompt attention. It is therefore, directed that all the field units working under your control may be sensitized and directed to comply with the directions of District Standing Medical Boards regarding appearance/presence of parties including injured as and when directed by the said board. If the parties despite receipt of intimation did not appear before Standing Board, the police officials/I.O shall be duty bound to appear before the District Standing Board.

6. It is further directed that DSP/Legal of your districts may be deputed as focal person to deal with the matter and ensure the compliance of the directions of Standing Medical Boards of districts.

7. A register will be maintained in the office of DSP/Legal. On receipt of any notice/information from the District Standing Medical Board shall be entered in the said register maintained in the office of DSP/Legal. The information/notice so received will be transmitted to relevant police station in original form or through wireless communication or telephonic message as per need of the hour with a copy to concerned SDPO for strict compliance.

8. All the Heads of District Police shall personally monitor that the directions of the District Standing Medical Boards are being complied within letter & spirit. In case of deviation, stern departmental action be taken against the delinquent police officials/I.Os failed to comply with the directions and awarded exemplary punishments in this regard.

9. The CCPO Lahore, RPOs, CPOs & DPOs of Punjab shall ensure implementation and follow up of these directions in true letter & spirit.

10. Compliance report on **fortnightly** basis be submitted to this office.

(ABUBAKAR KHUDABAKHSH) PSP
Addl. IGP/Investigation
For Inspector General of Police,
Punjab, Lahore.

CC to the:-

- i. PSO to IGP Punjab.
- ii. All RPOs in Punjab for information and appropriate action.
- iii. Dy. Registrar Criminal Lahore High Court Lahore w/r to the case titled above.

As in the process of reexamination of the injured two departments i.e. police and the health wing are involved and from the above reproduced

SOP it appeared that some more clarification was also required, therefore, this court directed the Secretary Health and AIG (Legal) to collectively arrange a meeting with law officers of this court, who had firsthand knowledge of the difficulties faced to this court in such like matters and then draw a uniform and comprehensive strategy to remove such practical problems. Consequent upon court orders, a meeting was held and ultimately a notification (SOPs for medicolegal cases) has been drafted and presented to this court, as tagged below:-



NO.SO(H&D)7-1/2018
GOVERNMENT OF THE PUNJAB
PRIMARY & SECONDARY
HEALTHCARE DEPARTMENT

Dated Lahore, the 18th May, 2018

To:

All The Chief Executive Officers,
 District Health Authorities of the Punjab.
All the Medical Superintendents,
 DHQ / THQ Hospitals of the Punjab.
All the Incharges,
 RHCs / BHUs of the Punjab

Subject: **SOPs FOR MEDICOLEGAL CASES**

In compliance of Lahore High Court, Lahore bench, observations on the subject cited above, and in the light of meeting held in the Secretariat of Primary & Secondary HealthCare Department, Lahore, presided by worthy Secretary P&SH, Ali Jan Khan, the following instructions / SOPs have been finalized for timely and smooth communication of information to the injured person, whether he is complainant or defendant in the court of law, for re-examination by the District Standing Medical Board:

- After the orders for re-examination through DSMB by the learned court of Magistrate Section-30, the chairman DSMB makes arrangements for re-examination of the injured person on date fixed by him.
- Although the prevailing practice is to inform all the concerned quarters, but it is imperative to inform the injured person through the concerned SHO to direct I.O for making sure the appearance of injured person before the DSMB on the fixed date.
- Same information be conveyed to the DPO / SDPO through a special messenger as well. He will direct the DSP Legal, concerned SHO and IO to produce the injured person before the District Standing Medical Board. SHO will ensue the delivery of letter to the injured person.
- The letter to the injured party also be sent by registered mail and if cell No. of injured person is available an SMS be sent to him by the office of Chairman DSMB and DPO.
- To further streamline the process, a twice information / letters be sent to the injured instead of three times (contrary to notified in letter No. 210-45/SML, dated Lahore the 15.01.2009) overcoming the delay in finalization of proceedings of DSMB.
- The day of Wednesday be fixed as 1st & last of month with timings 01:00 noon or as may be feasible for all the four members of DSMB to attend the meeting. In case of increasing burden of cases, other Wednesdays can be availed.
- The rest of ingredients of letter No. 210-45/SML dated Lahore the 15.01.2009 (**Copy annexed**), will be the same regarding the decision of case by the board, on basis of documents / evidence / witnesses if the injured does not attend the DSMB meeting twice.
- The non- appearance of injured person or avoidance of the proceedings of board will be conveyed to the learned court every time and also be mentioned in final report of the DSMB.
- One month practical training of newly inducted CMOs / MOs / WMOs shall be mandatory before start of medicolegal work and it shall be in concerned medical college Teaching Hospital to strengthen the gravity of initial MLC examination.

o/c *Ma P 18/05/18*
(DR. AQEEL MUHAMMAD KHALEEL)
SECTION OFFICER (H&D)

NO. & DATE EVEN

A copy is forwarded for information and necessary action to:-

1. The Additional IG (Legal) Punjab, Lahore
2. The Additional Secretary (Tech) Specialized Healthcare & Medical Education Department, 11-Lawrence Road, Lahore
3. The Surgeon Medico-Legal, Punjab, 6-Katchery Road, Lahore.
4. M. Haris Ramzan, Director Law, P&S Healthcare Department.
5. All District Medicolegal Officers in districts of the Punjab.
6. PSO to Secretary, P&SH Department
7. PA to Additional Secretary (Tech), P&SH Department
8. Master file

o/c *Ma P 18/05/18*
(DR. AQEEL MUHAMMAD KHALEEL)
SECTION OFFICER (H&D)

5. MLC is an evidence which is collected by the I.O during course of investigation as under section 156 Cr.P.C the Ilaqa Magistrate can direct for investigation in a case, as investigation includes collection of evidence for the purposes of digging out truthfulness or falsehood of the allegations for commission of an offence, he can exercise this power for passing an order for reexamination of an injured through District Standing Medical Board (hereinafter shall be read as DSMB) or the Appellate Board (hereinafter shall be read as Board). However, the Magistrate shall not pass an order blindfolded, rather shall apply his judicious mind to the facts and circumstances of the case. It appears that for the same reason vide three tire policy notifications, the Government Punjab, Health Department, desired the Magistrate to pass an order on the application of an aggrieved person.

6. On perusal of the above referred notification, it has been observed by this court that different clauses thereof may not have binding impact on the other relevant department/forum, as such, in order to tackle this situation, it is suggested that following comprehensive measures shall be included in the notification so as public it in a compact form:-

ILAQA MAGISTRATE:

- i) Application for the purposes of reexamination by DSMB or examination through Board against the decision of the DSMB shall be filed before the Magistrate by the aggrieved party;
- ii) After receiving the application the Magistrate will issue notice to the injured/complainant (as the case may be) and the Investigating Officer for their appearance;
- iii) The Magistrate shall not ordinarily adjourn the matter for more than one day;
- iv) The Magistrate shall pass the order after securing the attendance of the injured/complainant and the Investigating Officer. If after service the injured or the complainant do not appear he may proceed in their absence;
- v) If the Magistrate passes an order for reexamination through DSMB or the appellate board, he will provide three days' time to the applicant for depositing the relevant fee for this purpose as notified by

Government of Punjab, Health Department and he shall further clarify in the order that if the fee is not deposited within stipulated period, the order shall be deemed to have been recalled;

- vi) The Magistrate through the Investigating Officer shall get information about future dates when DSMB or the appellate Board is to assemble and shall direct the injured/IO or any other concerned to appear before the DSMN/Board on the said date. (According to the prevailing practice the DSMB assemble on first and last Wednesday of every month);
- vii) Copy of the order for reexamination through DSMB or the Board be sent to the DSMB and the Board as the case may be ;
- viii) Copy of the order be also sent to DPO and S.P (Investigation) concerned for compliance.

**DISTRICT STANDING MEDICAL BOARD/
APPELLATE BOARD.**

- i) After receiving order of the Magistrate for reexamination of the injured, DSMB or the Board shall examine the injured on the date so fixed by the Magistrate;
- ii) If for any justifiable reason beyond the control of DSMB/Board the injured could not be examined on the date fixed, DSMB or the Board shall inform all concerned about the next date to be fixed and intimation shall be communicated to the Magistrate as well as DPO well in time;
- iii) If on the date fixed, without any justifiable explanation, the injured does not appear despite his service, the DSMB/Board may proceed against him and may close the proceedings;
- iv) If any justifiable reason is put-forth by the injured the one more opportunity may be provided to him;
- v) If service on the injured is not effected by the I.O/SHO then DSMB/Board shall bring this aspect to the notice of the Magistrate/DPO who shall inquire into the matter, fix responsibility and proceed against the delinquent on departmental side, as well as if the act is covered under any cognizable offence then may direct for registration of criminal case and report in this respect by the DPO shall be sent to the DSMN/Board/Magistrate concerned;

- vi) If the relevant doctor who had conducted first examination of the injured does not appear before the DSMB/Board along with record without any justification then his matter shall be referred to the Secretary Health for inquiry and if found negligent he will be proceeded against under the relevant laws;
- vii) If proceedings before the DSMB/Board are completed they shall inform the Ilaqa Magistrate and DPO in writing and copy of the report be issued to the Investigation Officer, attested copy whereof shall also be sent to the Ilaqa Magistrate concerned.

POLICE.

- i) When an order for reexamination of the injured through DSMB/Board is received in the office of DPO, he shall immediately direct the concerned officials for its compliance;
- ii) The DPO shall depute one focal person for keeping the computerized record about the orders received for reexamination of the injured through DSMB or the Board;
- iii) The focal person shall ensure compliance of the orders and complete record in this respect shall be maintained and report of service shall be conveyed to the Magistrate/DSMB/Board before or on the date fixed for reexamination;
- iv) The DPO shall ensure that the orders of the Magistrate shall not only be communicated to the injured, rather the same shall also be complied with by presence of the injured before the Board, as well as production of the record of police;
- v) In case the injured is not served by the SHO/IO, the SHO/IO, as the case may be, shall convey the report to the DPO, who shall verify the genuineness of the reasons advanced therein and if not satisfied with it he shall adopt legal measures against the delinquent officials and shall further adopt legal measures to ensure service on the injured;

7. The Registrar of this Court shall send copies of this order to the Inspector General of Police Punjab and to the Secretary Health, so that they shall issue fresh SOPs by including the above observations and directions of this court. The I.G Punjab shall further circulate this order

amongst the RPOs, CPOs, DPOs, SHOs. The Registrar of this Court shall send copies of this order to all the District & Sessions Judges in the province, for onwards circulation to the Senior Civil Judges and the Magistrates for implementation.

8. At this stage I would like to offer my thanks to the learned counsel for the parties for rendering valuable assistance to this court. The effort put in by Ch. Anwaar ul Haq Pannu, Advocate and the learned officer has been commendable.

(MUHAMMAD QASIM KHAN)
JUDGE.

APPROVED FOR REPORTING.

Javed*