JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : CRL. MISC. NO.1223-2022
Tasharaf Ali alias Khanzada
Vs.
The State & Another

Petitioner by : **Mr. Saleem Raza, Advocate**
Respondents by : **Mr. Qaiser Iqbal, Advocate (Respondent No.2)**
Mr. Zohaib Hassan Gondal, State Counsel with Darya Khan, SI.
Date of decision : **11.01.2023**

AAMER FAROOQ C.J. The petitioner was tried in case FIR No.140 dated 01.05.2006 under sections 302/427/34 PPC registered with Police Station Shehzad Town, Islamabad and was convicted vide judgment dated 10.03.2008 by learned Additional Sessions Jude, Islamabad; he was awarded death sentence and was also ordered to pay compensation of Rs.1,00,000/- to the legal heirs of the deceased under section 544-A Cr.P.C. and in default to undergo six months simple imprisonment; he filed appeal before this Court which was partially allowed and the sentence was converted from death to life imprisonment through judgment dated 28.12.2016, however, while doing so, this Court did not mention anything regarding benefit of section 382-B Cr.P.C. The petitioner filed criminal petition for leave to appeal (Crl.P.L.A. No.210-2017) before Supreme Court of Pakistan which was dismissed on 14.02.2022. A review petition was preferred against the said judgment (Crl. R.P. No.22 & 23/2022), which also, was dismissed vide order dated 17.11.2022. It is pertinent to mention that even complainant agitated the matter before Hon'ble Supreme Court of Pakistan against conversion of sentence of petitioner from death to life imprisonment, which also, was dismissed and likewise, review against the same, was also dismissed. In the referred backdrop, the petitioner seeks benefit of section 382-B Cr.P.C. through the instant application under section 561-A Cr.P.C.

2. Learned counsel for the petitioner/applicant *inter alia* contended that benefit can be awarded at any stage by this Court and there is no bar for the same. Reliance was made to cases reported as Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department

Peshawar and others Vs. Mehmood Khan (2017 SCMR 2044), Akhtar Maqsood Vs. Superintendent of Camp Jail, Lahore and 4 others (2020 P Cr.LJ 447) and Muhammad Hussain and others Vs. The State (1995 P Cr.LJ 37).

3. Learned counsel for the complainant along with learned State Counsel *inter alia* contended that petitioner is convicted for heinous offence hence no occasion arises for granting benefit under section 382-B Cr.P.C. It was submitted that under the facts and circumstances, since this Court omitted to grant the benefit, hence it tantamount to denial and rejection of the concession.

4. Submissions made by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The facts, leading to filing of instant application, have been mentioned hereinabove.

6. The petitioner seeks benefit of section 382-B Cr.P.C. The benefit under section 382-B Cr.P.C. can be sought at any time, even where, learned trial court, or for that matter the High Court, while hearing appeal, omits to grant the same [1]. Even-otherwise, where sentence is maintained till Hon'ble Supreme Court of Pakistan and the conversion from death sentence to life imprisonment is made by the President, the benefit of section 382-B Cr.P.C. can be allowed by the High Court [2]. Likewise, any time spent in detention prior to conviction and the time spent in some other case, the benefit of section 382-B Cr.P.C. is allowed [3].

7. In view of above facts and circumstances, there is no bar for grant of benefit of section 382-B Cr.P.C. to the petitioner and the remissions, available to him under the law, would reduce his sentence accordingly.

8. The submission made by learned counsel for respondent No.2 that it is a heinous offence hence remission cannot be allowed is without any substance. The sentence of the petitioner was converted from death to life imprisonment on the basis that motive could not be established clearly, however, as has been observed in case reported as (2017 SCMR 2044) [1] supra, it is a mandatory provision and has to be allowed even where there is omission.

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[1] Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar and others Vs. Mehmood Khan, 2017 SCMR 2044.
[2] Muhammad Hussain and others Vs. The State, 1995 P Cr.LJ 37.
[3] Akhtar Maqsood Vs. Superintendent of Camp Jail, Lahore and 4 others, 2020 P Cr.LJ 447.

9. For the above reasons, instant application is allowed and the petitioner is allowed benefit of section 382-B Cr.P.C. in the above mentioned case.

(CHIEF JUSTICE)

Approved for reporting

Zawar