JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT.

Criminal Revision No.50/2017.

Muhammad Asif Khan Vs. The State, etc

Petitioner by: **Mr. Muhammad Shoaib Abbasi, Advocate.**

Respondents by: **Mr. Muhammad Haseeb Ch. DAG.**

Liaqat Ali, Acting Deputy Director, FIA/SIU, Islamabad.

Muhammad Umair, Section Officer (FIA)/Ministry of Interior.

Abdul Nasir Jora, RDM, ADC(s).

Date of Decision: **18.05.2017.**

MOHSIN AKHTAR KAYANI, J:- Through the instant petition, petitioner has challenged order dated 30.03.2017, passed by learned Additional Deputy Commissioner (G) Additional District Magistrate/Inquiry Magistrate, ICT, Islamabad, whereby request submitted by the UAE authorities for extradition of the petitioner was allowed.

2. The facts, in brief, are that the petitioner was nominated as an accused in the murder case of Muhammad Yasin Ibrahim, a Pakistani National, who was murdered on 20.04.2003 in Dubai. The UAE authorities during the course of investigation arrested different individuals and finally fixed the liability for the offence of murder and robbery. Two of the suspects got recorded their confessional statements, which they retracted at later stage, however, the prosecution department of Dubai finally submitted challan of murder and robbery against Muhammad Hussain, Riaj Ahmed and Muhammad Asif Khan, present petitioner before the Criminal Court of Dubai. The Criminal Court after completion of the trial in criminal case No.4057/2003 announced the judgment dated 17.04.2004 and the petitioner was convicted for life imprisonment for the charge of committing murder of Muhammad Yaseen Ibrahim in absentia. Government of Dubai sent a request on 26.01.2012 to the Government of Pakistan for extradition of the petitioner in above mentioned case. The inquiry was

entrusted on 27.01.2015 to the Additional District Magistrate Islamabad. The petitioner was arrested on the direction of the learned Inquiry Magistrate. The inquiry was conducted and finally concluded vide judgment dated 30.03.2017, wherein recommendations were given to the Federal Government for extradition of the petitioner to the requesting State, hence, this petition.

3. Learned counsel for the petitioner has contended that findings of the inquiry are against the law and facts of the case and are not sustainable in the eyes of law; that there was no prima facie case against the petitioner and there is no justification for extradition of the petitioner to the requesting State; that no treaty of extradition was produced before the learned Inquiry Magistrate and the documents exhibited during the inquiry proceedings were not duly authenticated, therefore, the same cannot be read and used against the petitioner; that even the exhibited documents and relied upon by the Inquiry Magistrate while recording the findings are illegal; that an option was available to the Government of Pakistan to prosecute the petitioner in Pakistan but the authorities in Pakistan are not inclined to proceed under the said law in Pakistan; that requesting State has not submitted any request for extradition of the petitioner during the pendency of the trial in Dubai, whereas alleged crime took place on 20.04.2003; that the request was made in January, 2012; that the petitioner was convicted in absentia, hence, he was condemned unheard, which is violation of principle of natural justice; that the petitioner is a Pakistani citizen and if for the sake of arguments, it is admitted that the petitioner had committed the offence, then he can be prosecuted in Pakistan under section 3 of Pakistan Penal Code; that no cogent evidence is available against the petitioner and petitioner has been convicted on the basis of exculpatory statement of Muhammad Hussain and retracted confession of Riaj Ahmed; that the alleged confession was made before Jamal Ibrahim Ali Lieutenant of the prosecution agency and Muhammad Hassan Juma another officer of prosecution agency; that the confessions, which have been taken under duress and coercion are inadmissible under the Pakistan law.

4. Conversely, learned DAG as well as Acting Deputy Director, FIA/SIU, Islamabad have opposed the instant petition on the ground that the petitioner has

not taken any plea to substantiate his claim except he absconded from the place of occurrence and remained fugitive from the law for the last 14 years; that there is ample evidence against the petitioner as he was duly identified by the UAE authorities/prosecution department with the help of collected evidence received during the trial as well as inquiry; that the petitioner was prosecuted on the basis of technical report, forensic medical evidence and confessional statements got recorded by the co-accused; that UAE authorities tendered the collected evidence from Exh.P.1 to Exh.P.113 comprising of forensic evidence, technical data, traveling documents of the petitioner, certified copy of the judgment of the criminal Court of Dubai, pictures and confessional statements of the co-accused as well as the law on subject including the bank statement. Learned DAG has also referred the Arabic version of the original documents alongwith translated documents submitted before the Additional District Magistrate/Inquiry Magistrate on record; that prima facie, the inquiry concludes the involvement of the petitioner with the alleged crime.

5. I have heard the arguments and gone through the record.

6. It has been observed from the record that incident of murder was reported on 21.04.2003 in the morning in the operations room of General Headquarters of Dubai Police, wherein a dead body was lying in trading shops in Aldaghaia Area. On the report of the said incident, the local police Al Naef Police Station approached the place of occurrence and incident took place in “Drawn Trading shop” located in Ahmad Abdulghafour Saeedi Building, where the dead body of deceased Muhammad Yaseen Ibraheem Haji Noor Muhammad (Pakistani National) was lying. On inquiry by the police the representative in Draw Trade Shop for General Trade stated before the police that in the morning of Sunday he sought that victim lying on the floor of the office, whereas he was bleeding, therefore, incident was reported to the police. During the course of investigation by the police, it was revealed that accused Qaiser Shah Meskeen Shah, Said Dilawar Hussein Sherbi, Mohammad Hussain Abdulrazaq, Riaj Ahmad Rasheed & Muhammad Asif Khan were allegedly involved in the case. The said matter was disclosed on the complaint of Mohammad Salim Omar a Pakistani National,

one of the victim's relative, who reported the investigation department on 12.05.2003 that he found in his post office box an account statement issued by Emirates Bank International, Alsouq Branch, in the name of the victim, whereby it revealed that account of the victim was used through ATM card by unknown persons after his death and an amount of 2500 Dirhams and 3500 Dirhams was withdrawn on 22.04.2003 and 30.04.2003, respectively. The local police after thorough investigation arrested Muhammad Hussain Abdul Salam Abdulrazaq, Pakistani National, who had withdrawn the amount through ATM from the account of victim Muhammad Yaseen Ibrahim.

7. It has further been observed from the record of Public Prosecution Department Government of Dubai that role of the petitioner has been narrated in Exh.P/9, which is as under:-

> *"On asking the accused/Riaj Ahmad Rashid Ahmad Indian-tailor, he denied the accusation of the deliberate murder that he was accused of and he confessed that he stole money and he stated that on the accident, he went to the shop of the accused/Mohammad Asif after he had called him and asked him to come. On his arrival, he found him with the accused/Mohammad Hussain Abdul Salam as he told him that he passed with hard financial conditions and that he did not have money and that he knew a person who had a lot of money and that they would go to his shop to steal it after they hit him till he faints. The three accused agreed according to what the accused/Muhammad Asif planned and the accused/Muhammad Hussein went to the shop of Drawo trading shop to monitor it till the three persons who worked in the shop leave and till the victim became alone. The two accused/Mohammad Asif and Riaj Ahmad remained in the shop of the accused/Mohammad Asif. At about 9:30 PM, the accused/Mohammad Hussein called the accused/Mohammad Asif and he told him that the victim was alone in the shop. At that time, the accused/Mohammad Asif got out a plastic bag containing a piece of cloth and a plastic stick and he delivered them to the accused/Riaj Ahmad and he took a leather pod containing two big and small knives and he hung the pod in his shorts and they went to the shop of the victim and when they arrived, they saw the accused/Mohammad Hussein standing before the cafeteria close to the shop, and they ascended to the shop where the accused/Mohammad Asif proceeded and they saw the victim sitting to his table and the accused/Mohammad Asif asked him whether he sent transfers or not and the victim replied negatively, and the accused/Mohammad Asif replied that someone had told him about that so the victim asked him to allow that person to call him so the accused/Mohammad Asif called the accused/Mohammad Hussein and the victim continued on talking to him and during his speech, the accused/Riaj Ahmad got out a plastic stick and he hit the victim on his head twice and he fainted and continued sitting on his chair. The accused/Mohammad Asif searched the office of the*

victim and the accused/Riaj Ahmad went to the second office located on the stairs and when he searched it, he did not find anything and when he returned back to the victims' office, he found the accused/Mohammad Asif existing. The accused/Mohammad Asif returned his searching for the office again, and they found in one of the drawers a box containing some credit cards so he took them and put them in a bag in his hand. At this time, the victim fell on the floor and he recovered so the accused/Mohammad Asif caught the victim from his shirt and hit him on his head with the handle of the big knife so the victim was bleeding from his head and the accused/Mohammad Asif put the knife on the neck of the victim and asked him: Where is the money? So the victim took out from his pocket an amount of (300) Dirham and he delivered them to the accused and asked him again where is the rest of money? And he asked him to deliver him the money or he would kill him. The victim caught the leg of the accused and said to him that he is a poor man and he asked him not to kill him. The accused/Mohammad Asif hit the victim on the back of his head and he hit him many times on his head by the knif's handle and he put the knife on his neck and asked him about the place of money but the victim replied with same answer where blood was bleeding on the head of the victim. The accused/Riaj Ahmad asked the accused/Mohammad Asif not to hit victim in this way and he descended and waited at the bottom of the stairs for about one minute. The accused Mohammad Asif came and when he asked him about what he found, the accused Mohammad Asif told him that he did not find except 300 Dirham and two mobiles and credit cards."

8. Similarly, Public Prosecution Department referred the Forensic Medical Report Exh.P/11, which is as under:-

"The forensic medical report 0.12/5/1032 dated 23/4/2003 of the deceased/Mohammad Yaseen Ibraheem-Pakistani national and he concluded the following:

1- The cause of the death of the mentioned above was multi injuries but the main cause of death was the stab in the neck in which the tool led to the full cut of the Carotid artery in the neck causing severe bleedings.

2- The used tool which led to the tearing cuts is a steel took and long one and heavy and the cuts could not be because of hitting or stabling by the mentioned above "rule".

3- The stabbing cut in the neck and the cut in the right chest and the lower hand were because of a sharp tool with a blade that is not shorter than 7 centimeters.

4- There are multi angles of the stabbing resulting from the movement of the tool through the soft tissues in the neck.

5- There is distribution for the injuries on this way that is evidence that the victim was in a state of movement trying to resist as there is evidence because there was defensive cut in the lower of the right hand.

6- The direction of the stabbing was from the right to the left and from the top to the bottom and from the in front to the behind.

7- All the injuries were simultaneous with each others.

8- The mentioned above died during a period not less than eight hours from the hour of examination on the body at the place of the accident. (at11:30 AM)".

9. Public Prosecution Department Dubai on the basis of their investigation, submitted final report before the Court on the following charges:-

> ***"First:*** *they killed deliberately with premeditation the victim/Mohammad Yaseen Ibraheem and they prepared their tools for their crime using weapons including a knife, a plastic stick and they monitored the victim till his office was void of the revisers and the second and third accused entered and attacked him while the first was outside the shop monitoring the place and when the second and third enter.*
> *They continued in hitting the victim using the plastic sticks and they stabbed him using a knife which they prepared and they left him full of blood causing him the injuries mentioned in the report of the forensic doctor and the three accused left the shop using a taxi.*
> ***Second:*** *The first crime is connected to another crime which is the theft as the accused at the same time and date after their committing for their first crime, they stole an amount of (300) Dirham and two mobiles belonging to the victim as it was documented in the papers.*
> ***Third:*** *the first and third accused: They stole the money an amount of (5500) belongings to the victim/Mohammad Yaseen Ibraheem using the card of ATM that belongs to the victim as it is documented in the papers".*

10. The SIU during the course of inquiry proceedings submitted warrant of arrest of the petitioner, accused of case No.4057/2003 Dubai on 26.01.2012/ Exh.P.20 with the following charge and case history:-

> *"On 26/6/2009 the murder of the victim/Mohammad Yassin Ibrahim Haji Noor Muhammad- a Pakistani national murder took place in Dighaya area, Emirate of Dubai-And the measures of research and investigation by the police and investigations by the public prosecution showed that the above mentioned accused, and others has committed the crime of murder with premeditation where he stabbed the victim several stabs with knife and with the use of plastic stick claimed his life and then stole money mentioned in the papers. And escaped outside the country.*
> *Referring the case to the Criminal Court it has ruled in absentia on 11/11/2009 against the accused to life imprisonment.*
> *Charge*
> *Premeditation Murder and felony of theft by force punishable under articles (331, 332, 333 -2-2, 381, 382, 389/6) of Federal Penal Low No. (2) of 1987 and its amendment."*

11. The Criminal Court at Dubai while concluding the trial convicted the petitioner vide judgment dated 17.04.2004/Exh.P.26, whereby petitioner Muhammad Asif Khan was awarded life imprisonment in absentia. The certified copy of the judgment in Arabic text has been placed on record, which was exhibited in translated version in English Exh.P.26 to Exh.P.33 signed by Chief Criminal Court. It has further been observed that during the inquiry proceedings

all the evidence including original certified record of UAE Public Prosecution Department (Exh.59 to 112) from Exh.P.1 to Exh.113 was produced.

12. All the exhibited documents and statements before the Inquiry Officer were confronted to the accused in statement recorded U/S 342, Cr.P.C. After conclusion of the inquiry, learned Inquiry Magistrate has given following findings:-

> *"I have heard both the parties and perused the record, sufficient incriminating documentary evidence is available on the record and it is safely concluded that prima facie a case is made out against the accused, therefore, the said fugitive offender may be extradited to UAE, in view of a prima facie case against him as per the requirement of Section 10 of the Extradition Act, 1972 without prejudice to the merits of any trial that may be contacted. The extradition of accused is the prerogative of the Federal Government as per Section 13 of the Extradition Act, 1972, therefore, the case is thus being forwarded".*

13. From perusal of the record, it is evident that prima facie, the petitioner had allegedly committed murder of Muhammad Yaseen Ibrahim. Numbers of witnesses were produced by the Public Prosecution Department Dubai before the Criminal Court as well as before this Court, whereby the charge of murder and theft was proved against the three accused including the present petitioner Muhammad Asif Khan and he left the Dubai on the next day of murder. The petitioner was arrested in Pakistan after 14 years from Karachi by SIU and has been produced before Inquiry Magistrate for the purpose of inquiry. The Dubai Government Authorities requested to Government of Pakistan for extradition of the petitioner, who was involved in criminal Case No.4057/2003. The request was submitted on 16.03.2012 by the UAE Embassy at Islamabad to the Deputy Director M-III, M/ Foreign Affairs of Pakistan.

14. The main objection raised by learned counsel for petitioner was the inadmissibility of the documents during the course of inquiry Exh.P.1/1 to Exh.P.113, when no certificate of translator of the document was tendered in evidence certifying the correct translation of Arabic transcript

15. I have gone through Exh.P.1 to Exh.P.30, whereby each and every page of the documents tendered as Exh.P.1 to Exh.P.57 are the English version issued by Public Prosecution Department Government of Dubai with their official seal on

each and every page. Even the Public Prosecution Department Dubai has put their stamp on each and every page and all the documents in English have been given certificate as below:-

> *"I, Mehmoodul Hasan, the signatory to this document, as sworn translator of Dubai Public Prosecution, do hereby certify that I have translated the enclosed document from Arabic to English correctly. Dated 16/02/2012.*
>
> *Translator Senior Chief, Translation & Typing Division Safia Khamis Al Mansoori."*

16. Besides the above referred documents, the Arabic version starting from Exh.P.58 to Exh.P.113 including bank statement of deceased Muhammad Yaseen, whereby each and every Arabic version/transcript was attested by UAE Embassy, Islamabad with stamp and signatures of the competent authority. Even otherwise all these documents have been conveyed to M/o Foreign Affairs Government of Pakistan on 16.03.2012 and the ministry vide Exh.P.A/1, dated 29.03.2012 confirmed all these documents as request for extradition of accused Muhammad Asif Khan to UAE.

17. This entire exercise of attestation/confirmation and further transmission by M/o Foreign Affairs gives rise to the presumption that these documents have been verified by Foreign Government, Public Prosecution Department Dubai. Even the judicial verdict by Criminal Court Dubai has been attested by UAE Embassy, Islamabad, whereby a verbal note was issued by M/o of Foreign Affairs, which confirms that the documents have been received in accordance with law.

18. The petitioner during the course of inquiry has not refuted the contents rather he has only raised objection on the admissibility of the document but fact remains same that petitioner has not denied that proper translation has not been done or he has not agitated specific document, whereby he has disagreed with the translation of the documents. During the course of inquiry, petitioner was asked to explain as to why the evidence was collected by the investigation agency and Criminal Court convicted you for the murder of Muhammad Yaseen, whereupon he replied that he has not committed any offence and there is no direct or cogent evidence against him. He further stated that he had left Dubai on 21.04.2003 at

1:00 a.m in connection with his domestic affairs. He had not used the ATM Card of the victim.

19. The above referred findings give rise to the view that the petitioner is prima facie connected with the alleged crime especially if the entire incident, evidence, statements of co-accused and finger prints, which were recorded at spot should be taken into account although petitioner can only be confronted, when he will be put to investigation agency or produced before the Court of competent jurisdiction at Dubai for trial, even the issue of evidence collected by the prosecution, which was recorded in his absence, can be settled. It is settled proposition of law that no person can be prosecuted in violation of settled law or in violation of Pakistan law, especially when the alleged accused is Pakistani citizen, who was arrested in Pakistan for murder of Pakistani citizen in Dubai. The petitioner has raised objection and has given the example of Dr. Imran Farooq murder, in which the accused are facing trial in Pakistan. I am of the considered view that case of Dr. Imran Farooq is different in nature, especially when part of the crime was committed in Pakistan and Pakistani authorities lodged criminal case in Pakistan, whereas in present case entire crime was committed in UAE and there is not an iota of evidence on record that any part of the crime has been committed in Pakistan in order to take the cognizance of the matter, therefore, such objection is not sustainable.

20. All the evidence produced by UAE authorities through FIA/SIU, Islamabad very much reflects that petitioner is prima facie connected with the commission of alleged offence of murder and he could not justify his departure immediately after the murder of Muhammad Yaseen Ibraheem deceased. Even otherwise co-accused have got recorded their confessional statements, wherein they have explained each and every detail of alleged crime. The investigation agency and prosecution department on the basis of confession and retracted confession confirmed the involvement of the petitioner in the alleged crime. The technical evidence collected by the prosecution department of Dubai, the finger prints are required to be matched and it requires presence of the petitioner before Duabi authorities. The petitioner was convicted in absentia, whereas the law gives

protection to any individual, who was not present in Court unless he is brought before the Court. The entire evidence recorded by the Criminal Court at Dubai will be confronted to the petitioner and if the Prosecution Department UAE fails to prove its case, then the petitioner will be acquitted of the charges leveled against him. Same is the position in Pakistan. In normal course evidence is recorded only when witnesses or evidence might not be available in future, therefore, when any accused is arrested at the later stage, then denova trial starts in accordance with law, hence, objection raised by present petitioner is not sustainable in the eyes of law. It does not appeal to a prudent mind that evidence recorded in absentia would be treated as final under the law. Such kind of practice is inadmissible to all jurisdictions.

21. It is settled proposition of law to consider the available material, documents and given findings to the extent of prima facie involvement and if such fact emerges from record then extradition order should be passed in such circumstances. Reliance is placed upon **PLD 2013 Islamabad 80 (Maqsood Ahmed vs. Additional Deputy Commissioner (General/Inquiry Magistrate) and others)**, wherein it was held that:-

> *"If some material which has got the force of evidence, is already placed on record by the prosecution, it can be taken into consideration, for coming to the prima facie conclusion with regard to the factum of commission of offence. Circumstantial evidence and even a probability can be considered as evidence in the case and it can be taken into consideration for the decision of the fact in issue. In case in hand, besides the fact that the proceedings in question are in nature of inquiry to be held to see as to whether a prima facie case is made out against the accused to face trial in a criminal case which is pending in the Court of a foreign treaty country, the documents relied by the prosecution [P1 to P74] are, per se, evidence as per provision of section 9 of the Extradition Act and are admissible material which can be looked into by the Government, while passing the extradition order, therefore, the contention of the learned counsel that no evidence is available against the petitioner and that inquiry proceedings were conducted in contravention of the law, is devoid of force. Failure of prosecution to formally tender in evidence the admissible material-evidence is just a technicality and will not adversely affect the case of prosecution as a judicial notice of the said documents can also be taken. In such like case, the Enquiry Officer is not bound to hold any inquiry in these cases exactly in accordance with the mode of trial of Session Case."*

22. The above referred authoritative judgment clearly imposes duty upon the Court to peruse available record and evidence, which prima facie connects the petitioner with the alleged crime and if the answer is in affirmative then there is no other choice left with the Court but to allow the government authorities to extradite the accused. In present case petitioner is prima facie well connected with the murder and theft.

23. For what has been discussed above, Additional Deputy Commissioner/Inquiry Magistrate has given the findings in accordance with law. The instant petition merits dismissal, therefore, the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam.

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