

“In such circumstances, the then Incharge Malkhana SIP Muhammad Iqbal and ASI Muhammad Shakeel Mirza were called. They submitted the written report. According to reports/statements of SIP Muhammad Iqbal, who received the above case property from SIP Mehboob Illahi on 15.08.2009 and kept entry No:47/2009 and the same case property was being produced before the Court in trial and subsequently he was transferred and delivered the charge up till 23-11-2011 to SIP Shakeel Mirza and the property under register No: 47/2009 of above crime was handed over to new corner Kalkhana Incharge Muhammad Shakeel Mirza.

SIP Muhammad Shakeel Mirza submitted his report, he took over the charge of Malkhana of District Court Malir on 01-08-2011 and the above case property was received under entry No:53 from his former Incharge and he remained Incharge Malkhana up till on 09-04-2015 and he delivered the charge of all case properties from the year 2007 up till 2015 alongwith all maintained registers to ASI Abdullah Incharge Malkhana District Court Malir Karachi, who is previously involved in such case.”

and the opinion that has been drawn reflects that SIP Iqbal Qasim was Incharge of police Malkhana who, *however*, was cited as witness while claiming that some property was received by him when ASI Muhammad Shakeel was posted as Incharge Malkhana Malir. It, *however*, is that SIP Iqbal Qasim handed over complete charge to present applicant. Besides, it is stated that ASI Abdullah disclosed that report with regard to property is fake as he did not write, sign or send to DIGP Admin, Karachi and Abdullah remained silent for five to six months and failed to report to his high-ups. As per paragraph No. 3 of opinion, which is that:

“3. That ASI Abdullah remained silent for 5 to 6 months and did not report the matter to Higher Authorities. Hence his act is coming within the criminal misconduct of Connivance and criminal negligence. Hence, he is equally responsible for the same.”

Prima facie, above reflects that officials remained attempting to shift the burden by denying rather disputing the document as *fake* which, tentatively, can neither be taken as correct nor incorrect. I would say that in such like

situations, the question of guilt or innocence is always dependent upon *liabilities / obligations*. Mere difference of *designata* is not sufficient to believe one guilty while other as innocent and same principle needs to be applied while determining existence or absence of **reasonable grounds** towards link or otherwise of accused persons. *Prima facie*, perusal of the record and referred material shows that liability against the present applicant and HC Azmat appears to be same. It is matter of record that accused HC Azmat has been admitted to bail hence this is a fit case wherein rule of consistency is applicable. The questions regarding handing over and taking over of charge as well fake entries, since requiring proofs, hence same are left open for the trial court to be attended *properly* at relevant time. I, however, would add whenever a question / issue, requiring an answer, arises from papers (police papers) then same reflects upon the case as cloud. Further, the case is challaned; accused is in judicial custody and *prima facie* his custody is not required for any investigation purpose, therefore, keeping him behind the bars is not likely to advance any cause of justice, particularly when the offence does not fall within the prohibitory clause. In view of the case of *Tariq Bashir v. State* (PLD 1995 Supreme Court 34), it is settled proposition that in cases not falling within prohibitory clause, grant of bail is a rule and its refusal is an exception. Accordingly, applicant is admitted to post arrest bail in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial Court.

This Criminal Bail Application stands allowed in the foregoing terms.

JUDGE