

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CRIMINAL PETITION NO. 990 OF 2016

(On appeal against the order dated 09.09.2016 passed
by the Peshawar High Court, Peshawar in Cr.M/BA No.
1724-P/2016)

Wajid Ali

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner: Mr. Hussain Ali, ASC
Mir Adam Khan, AOR (Absent)

For the State: Mr. Zahid Yousaf, ASC for A.G. KPK
Mr. Zahidullah, SI/IO, PS Badabair

Date of Hearing: 07.11.2016

ORDER

FAISAL ARAB, J.- The petitioner is an accused alongwith his brother Abdul Ghani in FIR No. 967 dated 01.11.2015 registered under Sections 302/324/148/149 PPC at Police Station Badhber, District Peshawar. In the FIR it has been reported that on the fateful day when the complainant and his uncle were busy in repairing the wall of their house, the petitioner and his brother armed with weapons came and the co-accused Abdul Ghani instantly fired at his father, who succumbed to his injuries and died on the spot. It is also stated in the FIR that then the petitioner also fired at the complainant, who got injured, whereas his uncle ran from the scene of the crime to save his life. The petitioner after arrest applied for bail, which plea was rejected

by the Trial Court. Petitioner's bail application before the High Court also met the same fate. Hence this petition.

2. Learned counsel for the petitioner argued that insofar as the petitioner is concerned, the only role attributed to him was that of causing fire arm injury to the complainant which is reported to be '*ghair jaifa*', i.e. not falling within the prohibitory clause therefore bail ought to have been granted to the petitioner.

3. Learned counsel for the State, on the other hand, opposed the grant of bail on the ground that the petitioner along with his brother came with the common intention to commit murder and the father of the complainant was fired upon and killed, therefore, bail was rightly declined to the petitioner. In support of his case, he placed reliance on the case of Munawar Vs. State (1981 SCMR 1092). In the cited case bail was declined to co-accused on the ground that there was common intention evident on the record.

4. In rebuttal, learned counsel for the petitioner submitted that the case cited by the State counsel is not attracted as from the narration of the incident in the FIR in the present case it cannot be said that there already existed common intention to commit murder. He placed reliance on the cases of Muhammad Irfan Vs. State (2014 SCMR 1347), Faqir Hussain Vs. State (2014 SCMR 1502), Inayat Khan Vs. State (1982 P.Cr.LJ 1000) and Muhammad Khalid Butt Vs. State (1993 P.Cr.LJ 1491) wherein there was absence of any material to *prima facie* establish common

and, therefore, it was nature of injury caused by the co-accused that was made basis for grant of bail.

5. From the contents of the FIR, it cannot be out-rightly said that there was a common intention to commit crime. It *prima facie* appears that repairing of the common wall was the reason that provoked the accused. The conclusion that there was common intention can only be reached after the evidence in the matter comes on the record. So far as the role of causing injury on the person of the complainant is concerned, it is admitted position that the said injury was reported to be *ghair jaifa*. The petitioner in this view of the matter cannot be kept behind the bars for an indefinite period. In the circumstances, the petitioner has made out a case for post-arrest bail. This petition is therefore converted into appeal and is allowed and the impugned order is set aside. Petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.300,000/- with two sureties in the like amount to the satisfaction of Trial Court.

JUDGE

JUDGE

Islamabad, the
7th of November, 2016
Not Approved For Reporting
Khurram