

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)
W.P No.787-B/2025

Faran Khan.
Vs
The State and 09 others.
JUDGMENT

Date of hearing: **03.12.2025**

For petitioner: Mr. Farooq Khan Sokari, advocate.

For State: Mr. Najibullah Khan, Asstt: A.G, along
With Sher Mali, Investigating Officer, Police
Station, Mandan/respondent No.6 in person.

ABDUL FAYAZ, J.-

1. Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality and propriety of the *machalkas*/personal bonds executed by respondents No. 8 to 10 before respondent No. 7, whereby they were released after withdrawal of their pre-arrest bail petitions. The petitioner alleges that the said release was in derogation of law, contrary to the material collected during investigation, and violative of the principles governing criminal inquiries.

2. The facts, as emanating from the record, are that on 02.10.2025, the petitioner lodged an FIR regarding a double murder incident that allegedly took place at about 5:40 p.m. According to the FIR, the petitioner, along with his cousins and

uncle, was returning from the village mosque towards the graveyard of the village. When the complainant party reached near their house, respondents No. 8 to 10, allegedly armed with pistols, opened indiscriminate firing, resulting in the instant deaths of the petitioner's uncle and cousin, whereas, the petitioner and two eyewitnesses narrowly escaped unhurt. Motive was alleged as a previous blood feud.

3. During spot inspection, the investigating officer secured blood-stained earth from the places where the deceased had fallen, seven crime-empties of 9 mm bore from the positions attributed to the accused, three spent bullets from near the deceased, and the blood-stained garments of the deceased. These articles were taken into possession under recovery memos and dispatched to the FSL. Site-plan was prepared on pointation of the complainant. Medical evidence in the shape of post-mortem reports was also placed on record.

4. After the registration of the case, respondents No. 8 to 10 sought pre-arrest bail before the learned Sessions Judge. Interim bail was granted, subject to joining investigation. Thereafter, the said respondents withdrew their bail petitions. The grievance of the petitioner is that soon after such withdrawal, respondents No. 8 to 10 were released on personal bonds by respondent No. 7 in exercise of purported powers under Section

169 Cr.P.C.

5. The petitioner maintains that the local police remained under influence of the accused persons, resulting in an arbitrary, *mala fide* and colourable exercise of powers. He seeks suspension of the impugned *machalkas* and consequential directions restraining further cognizance of the matter until final decision of the writ petition, along with actions against respondent No. 7 for allegedly misusing authority.

6. Arguments heard and have perused the record produced with utmost care.

7. At the outset, it must be reiterated that while the High Court in its constitutional jurisdiction exercises powers to correct jurisdictional errors, illegalities, *mala fides* or procedural irregularities, such jurisdiction is not intended as a substitute for statutory remedies nor does it serve as an appellate forum over investigative steps undertaken by police authorities, unless it is demonstrated that such actions are patently tainted with illegality or are so unreasonable that no prudent authority could have made them.

8. The thrust of the petitioner's argument is that abundant incriminating material exists against respondents No. 8 to 10 and, thus, the police could not have invoked Section 169

Cr.P.C. However, it is a well-settled principle that the formation of an opinion during investigation—whether evidence is sufficient to forward an accused under Section 170 Cr.P.C, or to release him under Section 169 Cr.P.C—falls within the statutory domain of the investigating agency. Courts ordinarily refrain from interfering in such discretion unless it is demonstrably perverse, *mala fide*, actuated by extraneous considerations, or in open violation of statutory command.

9. The controversy in hand pertain to release of accused on personal bonds, therefore, it would be advantageous to reproduce the relevant section for the sake of convenience:-

“169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station ¹ [or to the police-officer making the investigation] that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or ² [send] him for trial.”

10. As the above referred Section 169 Cr.P.C, reads that if during investigation it appears to the officer-in-charge that there is not sufficient evidence or reasonable grounds to justify forwarding the accused to a Magistrate, the accused may be released on his executing a bond to appear when required. The

provision mandates *subjective satisfaction* of the officer based on material collected up to that stage. It does not require a full-fledged evaluation akin to judicial determination, nor can it be equated with acquittal or discharge. The section is procedural and temporary in nature, and does not preclude the investigating agency from subsequently forwarding the accused under Section 170 Cr.P.C, upon collection of further evidence.

11. The petitioner has relied upon the existence of an FIR, presence of eyewitnesses, recoveries from the spot, and medical/post-mortem and FSL evidence to contend that sufficient evidence existed. However, the mere existence of an FIR or the presence of recovery memos does not, *ipso facto*, establish *mala fide* exercise of powers under Section 169 Cr.P.C. The investigating officer is vested with authority to assess the credibility, consistency and investigative value of the material collected at a given stage. Courts have consistently held that it is not within the area of constitutional jurisdiction to substitute the investigating officer's interim assessment with its own, unless it is shown to be based on extraneous grounds or is a colourable exercise of power.

12. The petitioner has alleged political influence, yet no cogent material has been placed before this Court to substantiate such allegation. Mere assertions without

✓ demonstrable evidence cannot form the basis of declaring an official act *mala fide*. The record also reflects that the accused had joined investigation pursuant to interim bail orders and then withdrew their petitions. Their release, thereafter, on personal bonds under Section 169 Cr.P.C, in absence of concrete proof of *mala fides*, cannot be termed illegal per se.

13. The contention that the SHO has “stepped into the shoes of the trial court” is misconceived. The act of releasing an accused under Section 169 Cr.P.C, is not an adjudicatory decision but an investigative one, temporary in character, and always subject to reversal upon collection of further evidence. The trial court’s prerogative of evaluating evidence at the stage of framing charge or trial remains intact and unaffected.

14. It is also settled law that interference in ongoing investigation by issuance of directions to suspend or annul investigative steps—such as *machalkas*—may only be exercised sparingly and in exceptional circumstances. The relief sought by the petitioner, if granted, would amount to undue interference in the investigation, which the law does not permit.

15. As regards the prayer to suspend proceedings before the competent court or prevent cognizance of the case, the same is extra-ordinary in nature and not justified on the material placed on record. Investigation is still within the domain of the

investigating agency. The petitioner has not been left remediless; the law provides avenues including filing of a private complaint or seeking reinvestigation/supervision before appropriate forums, subject to demonstration of legal grounds.

16. This Court finds no violation of any statutory provision, nor any jurisdictional defect, or substantiated *mala fide*, which may warrant invocation of constitutional jurisdiction. The grievances raised pertain essentially to appreciation of evidence and investigative discretion, which cannot be examined in a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

17. For the foregoing reasons, the petition is devoid of merit. The petitioner has failed to establish that the impugned release of respondents No. 8 to 10 on personal bonds under Section 169 Cr.P.C read with section 63 Cr.P.C, was illegal, *mala fide*, arbitrary, or in excess of lawful authority. No case for interference in constitutional jurisdiction is made out. Accordingly, this writ petition is dismissed in *liminie*.

Announced

03.12.2025

Imranullah PS

(D.B) Hon'ble Mr. Justice Muhammad Tariq Afridi
Hon'ble Mr. Justice Abdul Fayaz

SCANNED

05 DEC 2025

Khalid Khan

5/12