

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M (B.A) No.634-M/2025

Petitioner(s): **(Siraj alias Khaperay)**
 By Mr. Hamza Nawab, Advocate.

Respondent(s): **(The State)**
 By Mr. Naeem Khan, A.A.G.

(Jan Muhamamd etc.)
 By Mr. Abdullah, Advocate.

Date of hearing: **06.11.2025**

ORDER

SABIT ULLAH KHAN, J:-Through this petition, Siraj alias Khaperay, the petitioner, seeks his post arrest bail in case F.I.R No.191 dated 30.05.2025 registered under sections 302, 324, 147, 148, 149 PPC and section 15 of the Khyber Pakhtunkhwa Arms Act, 2015 at Police Station *Kalakot*, District Swat. He has been declined same relief by the learned Additional Sessions Judge Swat at Matta vide order dated 14.10.2025.

2. According to the F.I.R., on 30.07.2025 at 19:00 hours, the complainant Jan Muhammad, in injured condition, made a report in Casualty of Hospital to the effect that on said day, he along with his relatives including injured Muhammad Wisal, Akhtar Ali, Ihsan Ullah, Pervaiz, and the deceased Muhammad Zamin were present on the spot, when his uncle Sher Zaman demanded his

outstanding amount from the present accused/petitioner, on which, the petitioner and his co-accused got infuriated and attacked them with daggers/knives, causing injuries to the complainant and other PWs. It was stated that the petitioner has caught hold of Muhammad Zamin while his son/co-accused Ali Rahman gave dagger blows to him and Akhtar Ali, resulting in their injuries, out of them Muhammad Zamin, on the way to the hospital, succumbed. The motive behind the occurrence was stated to be the demand for payment of the outstanding amount.

3. Arguments heard. Record perused.

4. It is evident from the record that the present accused/ petitioner has directly been nominated by the injured complainant Jan Muhammad for the commission of the offence in his initial report, however, he has only been attributed the role of catching hold of the deceased at the relevant time, while no specific overt act except a general allegation of dagger/knives blows along with other five accused persons has been ascribed to him. Moreover, the medical evidence *prima facie* shows that the deceased Muhammad Zamin has sustained a single injury caused by a sharp weapon. In these circumstances, the alleged role of catching hold of the deceased as well as the question of

sharing common intention / objection or facilitating the co-accused in the commission of the offence, can only be determined by the learned trial Court after recording the prosecution evidence. The occurrence also appears to be the result of a sudden fight without premeditation. The alleged motive also requires proof through evidence. Besides the above, the evidentiary value of the recovery of the crime tool on the alleged joint pointation of more than one accused including the present petitioner is also to be determined by the learned trial Court. Owing to the above grounds, for the time being, the case of the accused/petitioner falls within the ambit of further inquiry as contemplated u/s 497(2) Cr.P.C. In the case of Ehsan Ullah vs. The State¹, the apex Court has held that in a case calling for further inquiry into the guilt of accused, bail is to be allowed to him as of right and not by way of grace of concession.

5. In the case titled Ahmad Ali Vs. The State & another², the Hon'ble Supreme Court has extended the concession of bail to an accused person who has been charged for allegedly catching hold of one of the deceased then injured. Similarly, in the case titled Qurban Ali Vs. The

¹ 2012 SCMR 1137.

² 2021 SCMR 470.

State³ too, the apex Court has granted bail to the accused on the ground that no overt act was attributed to the accused in the occurrence except catching hold. Likewise, in the case titled Faraz Akram v/s The State⁴, the bail was granted by the apex Court on the ground of further inquiry as the fatal shot was attributed to the principal co-accused and the question of vicarious liability of the accused was left to the trial Court.

6. More-so, in the case of Muhammad Ijaz Vs. The State & others⁵ the apex Court has held that benefit of doubt, if established, can be extended even at bail stage to an accused. In the case of Resham Khan & another Vs. The State & another⁶, the apex Court has also extended the benefit of doubt to an accused/person even at bail stage by observing that the basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. It is also a settled principle of criminal jurisprudence that every accused is considered as innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal

³ 2017 SCMR 279,

⁴ 1995 SCMR 1360

⁵ 2022 SCMR 1271,

⁶ 2021 SCMR 2011,

jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding as to whether accused is entitled to bail or not. On the above rationale, in the case of Ali Raza Vs. The State & others⁷, the apex Court has granted bail to the accused on the basis of benefit of doubt qua his involvement in the commission of offence. Reference may also be given to a landmark judgment of the apex court in the case titled Syed Amanullah Shah Vs. The State and another⁸, wherein the apex Court has categorically held that whenever a reasonable doubt arises qua commission of offence by the accused at bail stage, he should not be deprived of bail.

7. It is worth mentioning that in the instant matter, co-accused namely Muhammad Sher and others, having been assigned almost identical role in the commission of the offence, have already been granted bail by this Court vide order dated 18.07.2025 in Cr.M (B.A) No.393-M/2025, therefore, on the principle of consistency and in view of the mandate of Article 4 read with Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, the present accused/petitioners cannot be denied the concession

⁷ 2022 SCMR 1245,

⁸ PLD 1996 SC 241

of bail particularly in light of the law laid down by the apex Court in the case of Noor Muhammad Vs. The State⁹.

8. Furthermore, there is no confession on the part of the accused despite remained in police custody for sufficient period. The investigation is complete in the case and the accused/ petitioner is no longer required to the police, therefore, I am inclined to enlarge him on bail, in the circumstances.

9. In light of the above, this bail petition is allowed and the petitioner is directed to be released on bail subject to furnishing bail bonds in the sum of Rs.200,000/- (rupees two hundred thousand) each, with two sureties each, in the like amount to satisfaction of the area Judicial Magistrate/ MoD, who shall ensure that the sureties are local, reliable and men of means.

10. The above observations are confined only to the extent of the instant bail petition being based on tentative assessment of the available record, therefore, the same shall have no bearing on trial of the case.

Announced.
06.11.2025

sd/-
JUDGE

⁹ 2008 SCMR 1556

