

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)
Cr.Misc:BA No. 493-B/2025

Ihsanullah.

Versus

The State etc.

JUDGMENT

Date of hearing: 10.11.2025.

For Petitioner: Faqir Mehbub-ul-Hamid,
Advocate.

For State: Mr. Muhammad Asghar Khan
Ahmadzai, Addl: A.G.

For Respondent: Malik Shaukat Khan Martwat,
advocate.

ABDUL FAYAZ, J.--

1. After having been declined the concession of post-arrest bail by the learned Additional Sessions Judge-III, Lakki Marwat vide order dated 16.10.2025, in case F.I.R No.463 dated 05.08.2025 u/ss 302/324/34 P.P.C, Police Station, Lakki City, District Lakki Marwat, the petitioner Ihsanullah has filed the instant bail application for the same relief.

2. As per the narrative set forth in the F.I.R, the complainant, Dil Jan, on 05.08.2025, at about 08:00

a.m, while accompanying the dead body of his brother Zakirullah, recorded the report in the Emergency Room of City Hospital, Lakki Marwat, stated that on the fateful night, he along with his deceased brother were proceeding from their residence to open their shop when, upon reaching the place of occurrence, the accused persons, namely Ihsan Ullah and Shahid Ullah, armed with Kalashnikovs, already present there opened firing upon them with the intention to kill them. Resultantly, Zakirullah sustained firearm injuries and fell to the ground, while the complainant escaped unhurt. After committing the offence, the accused fled away from the spot. It was about 06:00 hours. The injured was being shifted by the complainant and his relatives towards the hospital, but he succumbed to the injuries on the way to the hospital. The motive behind the occurrence, as alleged in the F.I.R, was a prior scuffle that had taken place between the parties a few days earlier. The report of the complainant was reduced into writing through *murasila*, which subsequently culminated in the registration of the F.I.R.

3. I have heard the learned counsel for the petitioner, the learned Special Public Prosecutor, as well as the learned counsel for the complainant, and have carefully gone through the record made available during the course of hearing.

4. The record reveals that although the petitioner stands nominated in the F.I.R along with co-accused (absconding), yet the allegations levelled therein are of a general nature, as no specific or individual role has been assigned to him. The F.I.R reflects only a collective allegation of firing, without specifying whose shot struck the deceased. This aspect, coupled with the admitted position that only a single entry wound was received by the deceased, *prima facie* creates doubt regarding petitioner's precise involvement in the occurrence. Reliance is placed on the case "***Asmatullahd v. The State and others***" [PLD 2011 SC 178], it was observed by his Lordship that:-

" 4. A perusal of the F.I.R. shows that only a general and collective allegation had been levelled against respondent No. 2 and his two co-accused regarding firing at Tasleem Khan deceased and no specific injury had been attributed to respondent No.2. Admittedly no weapon had been recovered from the possession of respondent No. 2 during the investigation of this case. The Post-mortem Examination Report in respect of the deceased shows that the

deceased had received only one fire-shot and that solitary fire-shot stands attributed by the prosecution to three accused persons including respondent No.2. It is, thus, not clear at this stage as to whether any injury had been "caused by the said respondent to the deceased or not.----- "

5. The petitioner, within three days of the occurrence, voluntarily surrendered himself before the authorities by seeking pre-arrest bail and simultaneously submitted an application to the S.P. (Investigation), wherein he categorically took the plea of alibi, asserting his non-presence at the scene of occurrence. Such prompt conduct on the part of the petitioner lends credence to the plea of *alibi* raised by him from the very inception of the case. It further appears from the record that one Arab Khan son of Jan Muhammad and Asifullah son of Saifullah, both residents of Mohallah Michen Khel, Lakki City, furnished two separate affidavits on judicial stamp papers affirming the innocence of the petitioner Ihsanullah; they were subsequently examined by the police under Section 161 Cr.P.C, wherein they confirmed the contents of their affidavits. Said plea, though to be finally adjudicated at trial, cannot at this stage be brushed aside summarily when it finds support from such

independent witnesses recorded during investigation.

Hence, the above referred affidavits supports the plea of *alibi* of the petitioner and the same can be taken into consideration at bail stage. Rel: ***Zaigham Ashraf***

v. ***The State & others [2016 SCMR 18]***, the relevant part of the judgment is as under:-

"6. There is no hard and fast rule that plea of alibi shall not be considered at bail stage because while granting or refusing to grant bail to an accused person, the Court is not required to see and consider the materials/evidence, collected in favour of the Prosecution but also to give proper attention to the defence plea, taken by an accused person.

7. In the case of Khalid Javed Gillani v. The State (PLD 1978 SC 256), broader principles were laid down with regard to accepting the plea of alibi of accused in that case, making tentative assessment of the materials brought on record and it was held as follows:-

"S. 497---Bail---Assessment of evidence---Court, in matters of bail, to go by its assessment of the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case---Prosecution though may prove a prosecution witness to be man of unimpeachable character for purpose of bail, however, hostile relationship between parties a circumstance not irrelevant to Court's assessment of material produced before it---Petitioner's plea of alibi supported by affidavit of a disinterested person, a medical practitioner of high repute, not having any ostensible connection with petitioner---Bail absence of proof of Doctor's evidence being not fit to be relied upon, held, could not be properly refused---Impugned order being based on misreading of S.497, petitioner ordered to be released on bail."

6. Similarly, in the case "*Ch: Muhammad Shafi v. Ch: Muhammad Anwar Sama and another*" [1975 SCMR 219], the Hon'ble Supreme Court has held that:-

" We consider that the learned Judge in the High Court has rightly remarked that the case relied upon by the learned counsel for the petitioner does not spell out an absolute bar in the way of the High Court considering the effect of a plea of alibi for the purposes of bail. We also find that the learned Judge has not given any decision regarding the veracity of the respondent's plea, but has merely remarked that it could not be lightly brushed aside. It will be seen that the alibi in this case comes from a large number of members of the Provincial Assembly, accordingly it would require serious consideration at the proper time

In view of the affidavits filed on behalf of the respondent, the case would appear to us to fall within the ambit of subsection (2) of section 497 of the Code of Criminal Procedure, namely, a case requiring further inquiry. We were informed at the Bar that the challan has not yet been submitted before any Court. It is, therefore, premature to comment upon the evidence which the prosecution intends to produce against the respondent."

7. Like-wise, in the case "*Malik Muhamamad Saliheen & others v. Arshad Siddiq & 02 others*" [1997 SCMR 1829], it was held:-

"7. We have already referred to the discussion of the three relevant authorities referred to by the learned counsel for the petitioner in the petitions but see no reason to come to the conclusion that the learned Judge in the High Court had acted unreasonably or perversely in declining the cancellation of bail to the two

accused-respondents and granting bail to the two other respondents in the two petitions. The crux of the matter is that the learned Judge in the high Court had himself "examined the Passport, P.I.A. Tickets and other documents" produced by the learned counsel for Kamran Siddique and Laiq Siddique and had reached the conclusion that the plea of alibi taken by the said respondents was not only *prima facie* supported by the documents available on the record but was augmented by the report of ASDPO Chamkani recorded by him on 22-12-1996. In so far as the case of Arshad Siddique and Irfan Siddique is concerned, as stated earlier, the role attributed to them in the F.I.R. and the plea of alibi of their co-accused was considered and thereafter their involvement in the offence was held to require further inquiry. Accordingly, we see no ground for interference and dismiss the two petitions."

8. Moreover, it is an admitted position on record that no weapon of offence has been recovered from the possession or at the instance of the petitioner. The mere recovery of two empties from the place of petitioner from the spot of occurrence, without any connecting recovery or forensic linkage to the petitioner, at this tentative stage, does not furnish a reasonable ground to withhold the concession of bail. The contention of the learned counsel for respondents that the plea of *alibi* cannot be considered at this stage does not hold much force, as law is settled that even at bail stage, where such plea is raised at the earliest opportunity and finds some support from the record, it can be taken into consideration for the

purpose of determining the existence of reasonable doubt regarding the petitioner's presence at the scene of occurrence.

9. In the given circumstances, when the role attributed to the petitioner is general in nature, the ocular account is yet to be tested at trial, and the evidence collected by the prosecution itself carries inherent doubts, further detention of the petitioner would not serve any useful purpose. The plea of *alibi* taken by the petitioner, coupled with the lack of a specific role and doubtful linkage of the recovered empties, sufficiently brings his case within the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C. The heinousness of the offence alone cannot be made a ground to deny bail when the material on record does not justify the continued incarceration of the accused at this stage.

10. In the light of above, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail bonds in the sum of Rs.200,000/- (two lacs) with two sureties, each in the like amount to the satisfaction of the trial court/ Illaqa Judicial Magistrate/MOD, concerned, who shall ensure that the sureties are local, reliable and men of

means. However, the observations recorded hereinabove are purely tentative in nature and should, in no way, prejudice an independent mind of the learned trial Court during the course of trial.

Annoyunced.

10/11/2025.

Iqraanullah PS

(S.B)
Hon'ble Mr. Justice Abdul Fayaz

SCANNED

11 NOV 2025

Khan Khan