

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE MUHAMMAD ALI MAZHAR

**CRIMINAL PETITION NO. 104-P OF 2023**

(On appeal against the order dated 19.06.2023  
passed by the Peshawar High Court, Peshawar in  
CrI.Misc. BA No. 1706-P/2023)

Said Nabi

... Petitioner

**Versus**

Ajmal Khan and another

... Respondents

For the Petitioner: Mr. Shabbir Hussain Gigyani, ASC

For the State: Mr. Altaf Khan, Addl. AG. KPK

For the Complainant: Mr. Suleman, son

Date of Hearing: 21.09.2023

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 19.06.2023 passed by the learned Single Judge of the learned Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case registered vide FIR No. 929 dated 23.10.2018 under Sections 302/324/427/148/149/337-A(ii)/337-F(ii) PPC at Police Station Nowshera Kalan, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that on 23.10.2018, the complainant Ajmal Khan along with his sons Jibran and Suleman and brother-in-law namely Fateh Khan were returning home after attending court proceedings. They were estopped by the petitioner and his co-accused, who started firing at them, as a result

whereof, Jibran was hit by a bullet and died at the spot while the complainant, Suleman and Fateh Khan sustained injuries.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that only a general role of firing has been attributed to the petitioner. Contends that the two co-accused of the petitioner, who were ascribed the similar role, have been acquitted by the court of competent jurisdiction whereas three out of seven were acquitted on the basis of compromise arrived, as such, the petitioner deserves the premium of post-arrest bail on the basis of these facts. Contends that merely the absconsion of an accused cannot be deemed as the proof of his guilt. Lastly contends that the learned High Court while declining bail to the petitioner has not followed the guidelines issued by superior Courts for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioner may be granted bail.

4. On the other hand, learned Law Officer assisted by the son of the complainant opposed the petition by contending that the petitioner has specifically been nominated in the crime report and he remained absconder for a considerable period of time, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. As per the contents of the crime report, the allegation against the petitioner is of generalized nature wherein it is alleged that he along with co-accused launched an attack on the complainant party and resorted to indiscriminate firing due to which one person lost his life whereas three sustained injuries. This Court is conscious of the fact that the occurrence has taken place when the complainant party was returning back home after attending Court proceedings in District Courts Nowshera.

However, this aspect of the prosecution case when juxtaposed with the subsequent events, which took place at a belated stage when two co-accused of the petitioner, who were ascribed similar role, have been acquitted by the court of competent jurisdiction after fulfilling all the legal requirements whereas three accused out of the seven have been acquitted on the basis of compromise between the parties, it shows that the bulk of the prosecution case has already been decided by the court of competent jurisdiction. After having gone through the impugned judgments passed by the learned two courts below, we are of the view that the only allegation against the petitioner that remains in the field is that he remained absconder for five years. No doubt that abscondence does constitute a relevant factor when examining question of bail as it is held by this Court in The State Vs. Malik Mukhtar Ahmed Awan (1991 SCMR 322) but this aspect has been subsequently dealt by this Court and it was held that the same has not to be considered in isolation to keep a person behind the bars for an indefinite period. It is settled by this Court that a person who is named in a murder case, rightly or wrongly, if becomes fugitive from law, his conduct is but natural. Reliance is placed on Rasool Muhammad Vs. Asal Muhammad (PLJ 1995 SC 477). This aspect was further elaborated by this Court in another judgment reported as Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53). We have been informed that nothing incriminating has been recovered from the possession or at the pointation of the petitioner. The only distinguishing feature, which was in field was nothing but the absconsion of the petitioner, which has already been elaborated above. In these circumstances, coupled with the fact that the case of the petitioner is at par with the co-accused, since acquitted, the petitioner has made out a case for concession of bail.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of

learned Trial Court. Before parting with the order, we may observe that the observations made in this order are tentative in nature and would not prejudice the proceedings before the Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the  
21<sup>st</sup> of September, 2023  
Approved For Reporting  
Khurram