

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

MR. JUSTICE MUHAMMAD ALI MAZHAR  
MRS. JUSTICE AYESHA A. MALIK

**CRIMINAL PETITION NO.207 OF 2023**

(Against the judgment dated 23.01.2023  
passed by the Peshawar High Court,  
Mingora Bench (Dar-ul-Qaza), Swat in  
Cr.M.B.A.No.22-M/2023)

Bakhti Rahman

...Petitioner

**Versus**

The State and another

...Respondents

For the Petitioner:

Mr. Asghar Ali, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Sardar Ali Raza, Addl. A.G.

Date of Hearing:

15.03.2023

**Judgment**

**MUHAMMAD ALI MAZHAR, J.** This Criminal Petition for leave to appeal is directed against the judgment dated 23.01.2022 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Cr.M.B.A.No.22-M/2023, whereby the petitioner's application for post-arrest bail in FIR No.291/2022 dated 10.12.2022 lodged under Sections 337-A(ii), 337-A(iii), 337-F(i), and 34 of the Pakistan Penal Code, 1860 ("**PPC**") at Police Station Karora, District Shangla was dismissed.

2. The gist of the FIR divulges the allegations against the petitioner that, on 10.12.2022, the complainant, in an injured condition, reported to the police that after offering Maghrib prayer he closed his shop and went home. The accused persons were present at the place of occurrence and accused Bakhti Rahman (petitioner), hit him on his head with a sharp object and caused injury on the left side of his forehead, while the remaining

accused persons also gave him stick blows as a result of which the complainant suffered injuries on his left arm, right knee and back. The petitioner filed the bail application which was dismissed by Judicial Magistrate, Chakesar/MOD Shangla, *vide* Order dated 02.01.2023; then he moved an application for bail before the Additional Sessions Judge, Shangla which was dismissed *vide* Order dated 06.01.2023, and thereafter the petitioner filed a bail application in the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat which was also dismissed *vide* the impugned judgment dated 23.01.2023.

3. The learned counsel for the petitioner argued that the other co-accused persons who are nominated in the FIR have been enlarged on bail by the High Court through the same impugned judgment, hence he pleaded that the rule of consistency be adhered to and that the same treatment be afforded to the petitioner. It was further contended that the alleged occurrence took place in the night, but neither any source of light is mentioned in the FIR, nor any motive to injure the complainant, hence the case requires further inquiry.

4. The learned Additional Advocate General opposed the grant of bail on the ground that the specific role of causing fatal injury has been attributed to the petitioner and the role of co-accused who have been granted bail is different, hence the rule of consistency does not apply in the present facts and circumstances of the case.

5. Heard the arguments. The FIR was lodged on the basis of daily diary report No. 23 dated 10.12.2022. All the accused persons have been assigned their roles in the FIR but the effective role has been attributed to the accused Bakhti Rahman, hence his role was rightly found distinguishable from the role assigned to the other co-accused. According to the emergency ward report, the complainant was lying on the bed in an injured condition, thus no inordinate or unexplained delay can be alleged. The FIR as well as the site plan and the medico legal report fully support the prosecution case. The police recovered blood from the spot along

with blood stained garments of the complainant and also recovered two iron rods as the weapons of the offence. According to the medical report, the C.T. Scan (Brain Study) shows the evidence of fracture of frontal bone from the left side and the bone was also exposed. The frontal bone is a part of the boney structure that forms the anterior and superior portions and also one of the thickest bones of the skull.

6. According to Section 337, PPC, six genres of "*Shajjah*" (injuries) have been depicted such as (a) *Shajjah-i-Khafifah* (شجہ خفیفہ); (b) *Shajjah-i-mudihah* (شجہ موضعه); (c) *Shajjah-i-hashimah* (شجہ هاشمیہ); (d) *Shajjah-i-munaqillah* (شجہ منعقله); (e) *Shajjah-i-ammah* (شجہ أمه); and (i) *Shajjah-i-damighah* (شجہ دامیه). In the case in hand the petitioner has been charged with Section 337-A(ii) and 337-A(iii) i.e. "*Shajjah-i-mudihah*" which defines the injury of exposing any bone of the victim without causing fracture and "*Shajjah-i-hashimah*" which denotes the fracturing of bone of the victim without dislocating it. The punishment of Section 337-A(ii) is *arsh* which shall be five per cent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to five years as *ta'zir*, whereas the injury described in Section 337-A(iii) is set to be *Shajjah-i-hashmiah* and the person accused of causing such injury is liable to *arsh* (compensation) which shall be ten percent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to 10 years as *ta'zir* which falls within the prohibitory clause of Section 497 of the Criminal Code of Procedure, 1898 wherein it is clearly provided that a person shall not be released on bail if there appears to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment of 10 years. Whereas another charge in the FIR is related to the offence under Section 337-F(i) which relates to the punishment of "*Ghayr-jaifah*" which means an injury in which the skin is ruptured and bleeding occurred and a person causing such injury under this clause is liable to *daman* (amount of compensation determined by the Court) and may also be punished

with imprisonment of either description for a term which may extend to one year as *ta'zir*.

7. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is *prima facie* connected with the commission of offence or not. In order to ascertain whether reasonable grounds exist or not the Courts not only have to look at the material placed before them by the prosecution, but see whether some tangible evidence is available against the accused or not to infer guilt. An essential prerequisite for grant of bail by virtue of sub-Section 2 of Section 497 is that the Court must be satisfied on the basis of opinion expressed by the Police or the material placed before it that there are reasonable grounds to believe that the accused is not guilty of an offence punishable with death or imprisonment for life or imprisonment of 10 years. The mere possibility of further inquiry exists almost in every criminal case. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offence and if the answer is in the affirmative he is not entitled to grant of bail.

8. So far as the rule of consistency or parity for considering the grant of bail to the petitioner is concerned, in the present facts and circumstances of the case we cannot lose sight of the fact that the roles of the co-accused who were granted bail are distinguishable to the role assigned to the petitioner who caused the fatal injury to the complainant. The doctrine of parity or rule of consistency in a criminal case elucidates that if the case of the accused is analogous in all respects to that of the co-accused then the benefit or advantage extended to one accused should also be extended to the co-accused on the philosophy that the "like cases should be treated alike". The concept of equal justice requires the appropriate comparability of roles and overt act attributed to the co-offenders, but in case of difference or disparity in the roles due

allowance cannot be extended to the co-offenders on the perspicacity that different sentences may reflect different degrees of culpability and or different circumstances.

9. In the wake of the above discussion, the Criminal Petition is dismissed and leave to appeal is refused. The findings and observations made herein are tentative in nature and shall not prejudice the case of either party during the trial.

Judge

Judge

Islamabad, the  
15<sup>th</sup> March, 2023  
*Approved for reporting*  
Khalid