

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

Criminal Petition for Leave to Appeal No.220/2024

[Against the order dated 02.02.2024 passed by the Peshawar High Court,
Mingora Bench in B.A. No.30-M/2024]

Itbar Muhammad *...Petitioner(s)*

Versus

The State & Others *...Respondent(s)*

For the Petitioner(s) : Mr. Zia ur Rehman Tajik, ASC
Syed Rifaqat Hussain Shah, AOR

For the State : Syed Kosar Ali Shah, Additional
Advocate General KPK
Sher Hayat, SI/IO
Bakht Rehman, DSP Timergara

For the Complainant : Mr. Zulfiqar Khalid Maluka, ASC.
alongwith complainant.

Date of Hearing : 07.06.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through the present petition, the petitioner seeks leave to appeal against the order of Peshawar High Court, Mingora Bench, dated 02.02.2024, **(Impugned Order)** whereby the post-arrest bail has been declined to him in FIR No.470 dated 23.11.2023 registered under Section 302/324/34 PPC at the Police Station Timergara, District Dir Lower.

2. The facts outlined in the FIR reveal that the complainant, Sabit Khan, reported an incident to the police alleging that two accused persons namely Itbar Muhammad (the

petitioner) and Layaq Muhammad committed the murder of his father, Tajbar Khan, and inflicted injuries on another passenger, Rahat Ullah. The FIR specifies that Itbar Muhammad is directly implicated in firing the shots that killed Tajbar Khan and wounded Rahat Ullah. The motive for this crime is stated to be an ongoing blood feud between the parties involved.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case with *mala fide* intention and ulterior motives; that co-accused has already been granted bail; that prosecution story is contradictory therefore it is a case of further inquiry.

4. The learned law officer assisted by the learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the petitioner. They contend that the petitioner is specifically nominated in the FIR with the specific role of firing shot on the person of the deceased; that case of co-accused is different from the petitioner.

5. We have heard the learned counsel for the parties and perused the material available on the record.

6. Perusal of the record indicates that on the fateful day, the complainant alongwith his father Tajib Khan and paternal cousin were on the way to their home, alongwith other passengers in a Suzuki Pickup from the Timergara Bazar, when they reached at the place of occurrence i.e. Balambat Road near Haider Market, accused persons Layaq Muhammad and Itbar Muhammad petitioner stopped the Suzuki pickup. The petitioner thereafter started indiscriminate firing at the father of complainant who succumbed to injuries at the spot whereas a passenger Rahat Ullah got injured.

7. On perusal of record it reflects that this is a case in which one person has lost his life and one person has sustained injuries at the hands of accused persons. Furthermore, the petitioner/accused along with another accused was nominated in the FIR and specific role of firing at the deceased and injured person was attributed to petitioner specifically. P.Ws in their statements have supported the version of the complainant given by him in the FIR. The medical evidence also corroborates the ocular account.

8. Record further reflects that the version of complainant is corroborated by the recovery of empties from the place of incident and recovery of pistol at the pointation of the petitioner, therefore, there appear reasonable grounds to believe that petitioner/accused has committed the offence which is punishable with death or imprisonment for life, hence the case of petitioner falls within the prohibitory clause of section 497, Cr.P.C. Reliance is placed on the cases of Sher Muhammad v. The State (2008 SCMR 1451) and Shoukat Ilahi v. Javed Iqbal and others (2010 SCMR 966).

9. This Court in the case of Shoukat Ilahi v. Javed Iqbal and others (2010 SCMR 966) has ruled as under:-

“6. We have given due consideration to the submissions made and have gone through the material available on record. From the record, we find that the name of the petitioner was mentioned in the F.I.R.; that the motive had been alleged against him; that a specific role of raising lalkara was assigned to him and that it was specifically mentioned that he and his co-accused fired at the deceased, which hit him. The P.Ws. have supported the case in their 161, Cr.P.C. statements which is further corroborated by the medical evidence, as according to the Medical Officer the deceased had six firearm entry injuries out of them two were exit wounds. Thus, prima facie incident has been committed by more than one person. From the material available on record, we are of the view that there are reasonable grounds for believing that the petitioner is involved in the case.”

10. At the bail stage, deeper scrutiny of material available on record is unwarranted, as that would affect the merits of the case at the trial. However, a tentative assessment of material available on record *prima facie* connects the petitioner with the commission of the offence which falls within the ambit of the prohibitory clause of section 497, Cr.P.C.

11. In view of above circumstances, the impugned judgment is well-reasoned wherein all the factual and legal aspects of the matter have been considered thus does not warrant any interference by this Court.

12. Consequently, this petition is dismissed and leave is refused.

13. It is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits without being influenced by the observations made hereinabove.

14. Above are the reasons of our short order of even date.

Judge

Judge

Judge

Islamabad,

7th June, 2024

APPROVED FOR REPORTING

*Paras Zafar, LC**