

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 245 OF 2023**

(On appeal against the judgment dated 20.02.2023  
passed by the Peshawar High Court, D.I.Khan in  
CrI. MBC No. 123-D/2022)

Saeed Ullah,  
Yar Muhammad,  
Inayat Ullah

... Petitioners

**Versus**

The State and another

... Respondents

For the Petitioners: Mr. Aftab Alam Yasir, ASC

For the State: Mr. Sultan Mazhar Sher Khan, Addl. A.G.

For the Complainant: Raja Muhammad Farooq, ASC

Date of Hearing: 04.05.2023

**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 petitioners have assailed the judgment dated 20.02.2023 passed by the learned Single Judge of the learned Peshawar High Court, D.I. Khan Bench, with a prayer to grant post-arrest bail in case registered vide FIR No. 300 dated 17.11.2021 under Sections 324/34 PPC at Police Station SNK, District D.I. Khan, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioners is that they along with co-accused while armed with Kalashnikovs launched a murderous assault on the complainant party and due to the firing made by them, the complainant sustained injuries on his body. After their arrest, the petitioners applied for post-arrest bail before the learned Trial Court and succeeded in getting the relief sought for. Being aggrieved, the complainant filed cancellation of bail petition before the learned High

Court, which has been allowed vide impugned judgment. Hence, this petition seeking leave to appeal.

3. At the very outset, it has been argued by learned counsel for the petitioners that the petitioners have been falsely roped in this case against the actual facts and circumstances. Contends that the allegations leveled against the petitioners are false, frivolous, baseless, concocted and the prosecution story is not worthy of credit. Contends that in the crime report no specific role has been attributed to the petitioners and the same is general in nature, therefore, the case of the petitioners is one of further inquiry. Contends that injuries sustained by the complainant are on non-vital parts of the body, as such, the provision of Section 324 PPC is not attracted in the case. Contends that the learned High Court while recalling the bail granted to the petitioners has not followed the guidelines issued by this Court for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioners may be released on bail.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant opposed the petition by contending that the petitioners have specifically been nominated in the crime report with a specific role of firing at the complainant, therefore, they do 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 petitioners is that they along with co-accused while armed with Kalashnikovs launched a murderous assault on the complainant party and due to the firing made by them, the complainant sustained injuries on his body. There is no denial to this fact that it's a case of promptly lodged FIR as the matter was reported to the Police within an hour of the occurrence. However, we have noted that only a general role has been ascribed to the petitioners and no details have been given as to which petitioner fired at which part of the body of the complainant. The

complainant received injuries on the non-vital parts of the body. A bare perusal of the medico legal report reveals that at the one hand the medical officer declared the injuries as "simple" and on the other hand he held the same to be "grievous". On court query, learned Law Officer admitted that none of the injuries exposed the bone. It is now well settled principle of law that if two views are possible from the evidence adduced in the case then the view favourable to the accused is to be adopted. Reliance is placed on Saghir Ahmed Vs. State (2023 SCMR 241) and Sahib Ullah Vs. The State (2022 SCMR 1806). As stated above, the complainant sustained injuries on non-vital parts of the body whereas more than 37 empties have been recovered from the place of occurrence, which *prima facie* shows that the accused had no intention to kill the complainant despite having ample opportunity to do so. In this view of the matter, the question whether Section 324 PPC would be applicable in the case or not would be determined by the learned Trial Court after recording of evidence. In the case reported as Samiullah Vs. Laiq Zada (2020 SCMR 1115), this Court has framed following seven guidelines for the purpose of cancellation of bail: -

- "i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.
- ii) That the accused has misused the concession of bail in any manner.
- iii) That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.
- iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) That accused misused his liberty while indulging into similar offence.
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused."

7. On our specific query, learned counsel for the complainant admitted that none of the above-said principles have been violated, which could be made basis to cancel the bail granted to the petitioners by the

learned Trial Court. In the Samiullah supra case this Court in categorical terms has held that where material available on the record does not support a finding of misuse of concession of bail by the accused in any manner, the court can decline cancellation of bail even if it is satisfied that the bail granting order passed by the court below is not sustainable in the eye of law. However, we are of the view that the learned High Court did not take into consideration the above aspect of the matter. Even this Court has shown magnanimity where although the order granting bail to the accused by the court was found to be perverse but showed reluctance to recall the order. Reliance is placed on Shahid Arshad Vs. Muhammad Naqi Butt (1976 SCMR 360). This court in a number of cases has held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioners squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into their guilt.

8. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The petitioners are admitted to bail subject to their furnishing bail bonds in the sum of Rs.200,000/- each with one surety each in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
4<sup>th</sup> of May, 2023  
Not Approved For Reporting  
Khurram