

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.M B.A. No. 469-M/2017.

JUDGMENT

Date of hearing: **10.11.2017**

**Petitioner:- (Izat Khan) by Mr. Safdar Khan,
Advocate.**

**Respondents:- (The State & 1 another) by Mr.
Rafiq Ahmad, Asstt: Advocate General and Mr.
Iftikhar Ahmad Nasir, Advocate.**

MOHAMMAD IBRAHIM KHAN, J.- Later, on arrest of this Petitioner Izat Khan on 08.08.2017 in an occurrence that happened on 17.10.2014 being indicted in case FIR No. 527 dated 17.10.2017 charged under sections 302, 337 F (i), 34 PPC registered at Police Station Wari District Dir Upper, thereby is looking for his bail after arrest.

2. Prior to, for the grant of similar relief the Petitioner presented an application before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Dir Upper at Wari, which was dismissed by an order dated 19.09.2017.

3. This is another attempt for all the grounds enumerated in this application with the following prayer:-

"It is therefore, humbly prayed that by accepting this petition, the accused/Petitioner may kindly be released on bail till the final decision of the instant case."

4. The assertions as per contents of the First Information Report against the Petitioner are that he alongwith Aziz-ur-Rehman caught hold of Faiz Muhammad husband of the complainant, who was killed by Shah Zoor Khan co-accused by giving him spade blows, whereas Zafar Khan is charged for causing injury to the complainant Mst. Bakht Mahal Bibi on her left hand wrist through stick blows.

5. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned Asstt: Advocate General for the State, record with their assistance gone through.

6. Learned counsel for the Petitioner referred to 2017 SCMR 279 " Qurban Ali vs

the State and others", 2016 SCMR 1593 "
Muhammad Shafi and others vs the State and
others", 2009 SCMR 299 " Mitho Pitafi vs the
State", 2016 SCMR 1520 " Muhammad
Aslam vs the State and others", 2011 MLD 155
(Karachi) " Niaz Ali vs the State", 2012 YLR
590 " Raheem Dad and 2 others vs the State",
PLD 2010 Karachi 384 " Ghulam Rasool vs
the State" and 2014 P Cr. LJ 352 (Lahore) "
Muhammad Ahmad Javed vs the State and
others. In the light of these dictums of the
Hon'ble superior Courts prayed for the grant of
bail in favour of the Petitioner. Inversely,
learned counsel for the complainant assisted by
learned Astt: Advocate General for the State
placed reliance on Lal Zameen vs the State and
another", 2003 P Cr.LJ 1691 (Peshawar) "
Safir Ullah vs the State and another", 2005 P
Cr. LJ 748 (Peshawar) " Bashir Khan vs the
State and another", 2013 MLD 810
(Peshawar) " Raza Khan vs the State and
another", 2014 MLD 437 (Peshawar) " Said
Muhammad vs Muhammad Siraj-ud-Din and

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others'' and PLJ 2012 S.C. 169 '' Muhammad Abbasi vs the State, thereby prayed for utter dismissal of the bail petition.

7. It is as pointed out that either the Petitioner has remained in absconsion for sufficient length of time, yet his role is on better footing than role assigned to co-accused Zafar Khan, who was already enlarged on bail and after facing trial eventually was acquitted. Yes, there is mark difference between role of the accused/Petitioner and that of co-accused Zafar Khan, as the Petitioner is only charged for catching hold of the deceased, thus, in the attending circumstances of the case, his role would require further inquiry into his guilt therefore, at this juncture he is entitled to the concession of bail.

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8. Even otherwise, it is settled by now that mere absconsion of an accused by itself is no ground for refusal of bail, if otherwise, case of accused/Petitioner is of further inquiry. In this respect wisdom is derived from the

judgment of the Hon'ble Supreme Court cited as
as "Ehsan Ullah Vs The State" (2012 SCMR
1137), wherein relevant citation speaks off:-

"It is settled law that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as of right and not by way of grace or concession and in such a case mere absconsion of the relevant accused person may not be sufficient to refuse bail to him."

9. In view of the above, the accused/Petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

10. These are the reasons of my short order of even date.

11. Needless to mention that the observations made above are purely tentative

in nature and should in no way prejudice the case of either party during trial.

Announced
Dt: 10.11.2017


JUDGE

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