

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. M No. 195-A of 2015

JUDGMENT

Date of hearing.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- After unsuccessful attempts to secure post arrest bail from the two Courts below, the petitioner, Muhammad Miskeen, has approached this Court for bail in case vide FIR No.31 dated 05.02.2015 under Sections 334/337-A(ii)/34 PPC Police Station Darband, Mansehra, which was lodged on the report of complainant/respondent No.2, Haider Zaman, who reported in the Police Station about the injury caused to him on his

upper lip with axe blow by the accused/petitioner thereby breaking his upper teeth and also axe blow on the middle finger of left hand of his daughter in law, Mst Gulzar Bibi, by co-accused, namely, Azim. The complainant also alleged criminal intimidation by the accused/petitioner and co-accused Azim with their pistols. The complainant also attributed kick and fist blows to other unnamed co-accused and mentioned the name of Miskeen son of Mir Ali and Muhammad Yaqoob son of Ghulam Rasool as eye witnesses in the FIR. The motive/reason for the occurrence was cited as complaint on 04.02.2015 by the complainant to the accused/petitioner regarding damage to the standing crop by goats of the accused/petitioner.

2. During investigation, the complainant was medically examined and beside lacerated injury on upper lip and

bruises on gum of upper lip, with underlying bone and gums visible, the Medical Officer found upper five teeth missing. The Medical Officer further found bruises on left shoulder area of the complainant, and referred the complainant to King Abdullah Teaching Hospital for X-Ray of the left shoulder as well as opinion of the Dental Surgeon. Likewise, injured Mst. Gulzar Bibi was also medically examined and the Medical Officer found a small simple lacerated injury on the left big finger caused by blunt means. In the King Abdullah Teaching Hospital, Mansehra, besides cut on the upper lip, radiographic examination showed 2/3rd of tooth present in the Socket of 3rd upper right side tooth.

3. Arguments of learned counsel for the accused/petitioner, learned Assistant Advocate General and learned counsel for

complainant/respondent No.2 heard, and record perused.

4. As pointed out by the learned counsel for accused/petitioner, the co-accused and brother of the accused/petitioner, namely, Azim has been released on bail vide order of the learned Sessions Judge Toor-Ghar at Oghi vide order dated 31.03.2015, on the ground that he was charged for causing injury on the left hand of Mst Gulzar Bibi with Axe blow, falling under Section 337-A (ii) PPC, carrying maximum punishment of five years imprisonment and thus falling outside the prohibitory clause of Section 497 Cr.PC. However, the role assigned to the accused/petitioner is a bit different as, though charged for axe blow like co-accused, but causing not only exposure of underlying bone but also causing *Itlaf* of tooth or teeth, falling under Section 337-U PPC, carrying penalty of *Arsh* or *Diyat* if

itlaf of 20 or more teeth is caused. In any case, section 334 PPC would not be applicable as no case of *Itlaf-i-udw* i.e. dismemberment, amputation or severing of any limb or organ of body of the victim is involved. The report of Dental Surgeon is silent about missing upper 5 teeth, which assumed significance in view of age of the complainant i.e 70 years, thus making case of the accused/petitioner that of further inquiry. It has been held in 2005 YLR 1664 (Lahore) that "case under Section 334 PPC was to be made out if any organ or limb was amputated whereas fingers of hand or toes or feet were not organ, and similarly, teeth were not an organ but whole jaw was an organ; case of accused at the most fell under Section-337-U PPC."

5. Besides, there is nothing on record to suggest that the accused/petitioner is a previous convict, habitual or hardened,

desperate or dangerous criminal. (2013 P.Cr.LJ 487 (Lahore) and 1999 P.Cr.LJ1668 (Peshawar).

6. Above all, investigation in the case is complete, complete as challan has been submitted in the case by the police/prosecution on 02.04.2015, thus the accused/petitioner is no longer required to the police/prosecution for the purpose of investigation.

7. Consequently, on the acceptance of the petition, petitioner/accused is admitted to bail subject to his furnishing bail bonds in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate. The sureties must be reliable and men of means.

Announced.
11.05.2015

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