

**JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT.**

**Cr.M/BA No. 235-P/2018**

**JUDGMENT**

**Date of hearing: 19.03.2018**

**Petitioner: Masaud**

**vs**

**Respondent: The State etc**

**WAQAR AHMAD SETH, J.-** Petitioner, Masaud son

of Ismail, seeks his post arrest bail in case F.I.R. No. 01 dated 01.01.2017 under Sections 17(4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with Sections 458/459/460/109 PPC registered at Police Station Badaber, Peshawar. He has been refused bail by the learned Additional Sessions Judge-II, Peshawar vide order dated 26.01.2018; hence, the instant petition for the same purpose.

2. As per contents of F.I.R. on 01.01.2017 at 0400 hours, complainant Attaullah in injured condition at Casualty, LRH Peshawar reported the matter to the local police to the effect that on the fateful night at 0100 hours, he along with his wife Mst. Ambareen, was present in the room of their house

situated at Bazid Khel stop, in the meanwhile, they heard some commotion in the courtyard of the house. Complainant and his wife opened the door of the room and found four armed persons present in the courtyard of the house. One of the accused started firing at the complainant and his wife, as a result of which, they hit and severely injured. Wife of the complainant succumbed to her injuries and died on the spot; thus, the instant FIR was registered against unknown accused.

Subsequently, on 09.02.2017, complainant Attaullah recorded his statement under Section 164 Cr.P.C. and charged the present petitioner along with others for the commission of offence.

3. Arguments heard and record perused.

4. Admittedly, the petitioner has not been charged in the F.I.R. rather he has been nominated by co-accused Rahatullah in his statement under Section 161 Cr.P.C. on 31.01.2017 and subsequently, complainant Attaullah in his statement under Section 164 Cr.P.C. on 09.02.2017. It is also an admitted fact that in the F.I.R. the complainant had shown

four persons present in the courtyard of his house but while recording his statement under Section 164 Cr.P.C., he charged six (06) persons for the commission of offence. Similarly, co-accused of the petitioner, namely, Niaz Muhammad alias Nakoo recorded his confessional statement and narrated the entire story but does not disclose the name of petitioner regarding his participation in the commission of offence. Moreover, the petitioner remained in police custody for sufficient time but nothing has been recovered/discovered from his possession. Petitioner is behind the bars since his arrest. Investigation in the case is complete and the petitioner is no more required for further investigation and keeping him behind the bars would serve no useful purpose.

5. As far as the abscondence of petitioner is concerned, it has been settled law that mere abscondence is no ground to decline the bail, if the case of an accused is otherwise found fit for bail on merits and the bail cannot be refused even if he had remained an absconder. Reliance can be placed on the cases of **State v. Malik Mukhtiar Ahmed** (1991 SCMR 322) and **Mitho Pitafi versus The State** (2009

**SCMR 299).** Thus, keeping in view the above facts and circumstances of case, this Court is inclined to extend the concession of bail to the petitioner.

6. Resultantly, this bail petition is allowed and the accused-petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 4,00,000/- (Rs. Four lacs) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

7. Above are the reasons of my short order of even date.

**Announced**  
**19.03.2018**

**J U D G E**

Nawab Shah PS (SB) Mr. Justice Waqar Ahmad Seth