

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.2903-P/2019

Muhammad Siyar son of Ghulam Habib,
r/o Aman Kot District Mardan.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner :-	<u>M/S Shabir Hussain Gigyani and Farman</u> <u>Ullah Sailab Aadvocates.</u>
For State :-	<u>Mr. Rab Nawaz Khan AAG.</u>
For respondent :-	<u>Syed Abdul Fayaz, Advocate.</u>
Date of hearing:	<u>04.11.2019</u>

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioner Muhammad Siyar, seeks post arrest bail in case FIR No.346 dated 25.06.2019, registered under sections 302/148/149 PPC and section 15 Khyber Pakhtunkhwa Arms Act, 2013, at Police Station Risalpur.

2. As per contents of FIR, complainant Jamal Nasir was serving in National Bank, Mardan. On 25.06.2019, he was present in the Bank when received information about murder of his father Jehanzeb Khan, so he reached DHQ hospital Nowshera, he saw dead body of his father murdered with firearm. He charged unknown culprit (s) for the offence. On 22.08.2019 i.e. after about two months of the occurrence, complainant recorded his statement under section 164 Cr.P.C. before the learned Judicial Magistrate, wherein he charged the petitioner along with co-accused Ghulam Habib, Imran and Ihsan Ullah on the ground that petitioner Muhammad Siyar had enmity with one Asfandiyar, whereas, the accused were sure that the

deceased was supporting the said Asfandiyar, hence, this case.

3. Arguments of learned counsel for the parties heard and record perused.

4. Record depicts that complainant is not eyewitness of the occurrence. Similarly, no one from the public has come forward to furnish ocular account of the occurrence. Though complainant in his statement under section 164 Cr.P.C., recorded after two months of the occurrence, has directly charged the petitioner along with co-accused for murder of his deceased father, but he has not disclosed the source on the basis of which he got satisfied about complicity of the petitioner in the commission of offence. Motive advanced by the complainant after two months of the occurrence is yet to be proved during trial. Co-accused Imran and Ihsan Ullah having similar role as that of the petitioner, have been granted bail by the learned trial Court vide order dated 20.09.2019, against which no bail cancellation application has been filed by the prosecution/State. The only ground on the basis of which petitioner has been refused bail by the learned trial Court is that a 30 bore crime pistol has been shown recovered on his pointation from a box inside the residential room of his house on 26.08.2019. At the moment, an iota of evidence is not available to show the said house to be the sole ownership of the petitioner or that it was in his sole occupation. Beside, the house search of the petitioner had been shown conducted on 22.08.2019 by the I.O. but nothing incriminating has been shown recovered from his house, whereas, the alleged pistol has been shown from his house on 26.08.2019 i.e. after four days, that too on joint pointation of the petitioner and co-accused Imran. Three crime empties of 30 bore have been shown recovered from the spot which according to FSL report have been fired

from one weapon, whereas no FSL report is available on file that these empties have been fired from the pistol allegedly recovered from the house of the petitioner. In this view of the matter, it is yet to be determined during trial as to whether alleged pistol is the crime weapon and if yes, what would be its evidentiary value having been shown recovered on joint pointation of two accused. In the pointation memo the alleged crime pistol has been shown to have been used by co-accused Imran and the said Imran has already been granted bail by the learned trial Court. The above discussed circumstances make the case of the petitioner arguable for the purpose of bail. Moreso, total five accused including the petitioner have been charged for the occurrence whereas as per FSL report the empties have been fired from one weapon. In this view of the matter, whether the occurrence is the doing of single person or otherwise, is also a debatable question which is yet to be answered by the learned trial Court during trial.

5. For what has been discussed above, participation of the petitioner in the commission of offence requires further probe hence he is entitled to the concession of bail. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of rupees two lac with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced:

04.11.2019

M.Siraj Afridi PS

JUDGE

SB of Hon'ble Mr. Justice Rooh ul Amin Khan.