

*Judgment Sheet*  
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD  
BENCH  
JUDICIAL DEPARTMENT**

*Cr.Misc. (BCA) No. 728-A/2019*

***JUDGMENT***

Date of hearing.....**27.02.2020**.....

Petitioner (Muhammad Rizwan) By Mr. Ghulam Mustafa Khan  
Swati, Advocate.

Respondents. (State) By Raja Muhammad Zubair, AAG and  
(Accused-respondent) By Mr. Munir Hussain  
Lughmani, Advocate.

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**SHAKEEL AHMAD, J.-** This petition has  
been moved by Muhammad Rizwan,  
complainant, for cancellation of post arrest  
bail granted to accused-respondent Gulfam in  
Crime No. 162 dated 07.08.2019 registered  
under Sections 324 / 334 / 34 PPC read with  
Section 15 of the Khyber Pakhtunkhwa Arms  
Act, 2013 at Police Station Kaghan.

2. The allegation against the accused-  
respondent is that on 07.08.2019 at 19:30  
hours he alongwith his co-accused fired at the  
complainant party, as a result of which,  
Naseem and Ashfaq sustained bullet injuries  
and left leg of Ashfaq was amputated. Vide  
order dated 10.10.2019 respondent was  
allowed post arrest bail by the learned  
Additional Sessions Judge Balakot, hence,  
this petition.

3. I have heard the arguments of learned counsel for the parties and gone through the record.

4. It is a matter of great concern and I regret to know that in this case the learned Additional Sessions Judge Balakot, while granting post arrest bail, failed to apply his own independent mind to the facts of the case and without discussing the material on the record and pleas of the parties, straightaway granted post arrest bail to the respondent with the following observations: -

*“From the arguments of the respective learned counsels for the petitioner and respondent No.2 and the perusal of the record it transpires that this case is fit for further inquiry. There is no dearth of questions in this case begging for answers, which will come when trial will be concluded which will take time and till then the petitioner cannot be left to suffer behind the bars. Thus, this post arrest bail petition is hereby accepted whereby the petitioner is granted bail provided that he furnishes bail bonds in the sum of Rs.100,000/- (one hundred*

*thousand) with two sureties each in the like amount subject to the satisfaction of this court. The sureties shall be local, reliable ad men of means.”*

5. When the learned counsel for the accused-respondent was confronted with the bail granting order, he too admitted that the learned Additional Sessions Judge Balakot without adhering to the pre-conditions laid down by the superior courts of Pakistan for grant of post arrest bail or the provisions contained in Sub-section (2) of Section 497 Cr.P.C granted post arrest bail to the respondent. Such a course, adopted by the learned Additional Sessions Judge, miserably falls short of judicious adjudication. In the instant case, the respondent and his co-accused have specifically been charged in the crime report for causing bullet injuries to brothers of the complainant namely, Naseem and Ashfaq. It was specifically stated in the crime report that due to fire shots of accused Gulfam, Naseem sustained bullet injuries on different parts of his body and from the fire shots of accused Gul Shan, his second brother Ashfaq sustained injuries and

resultantly his left foot was amputated. The medico-legal report fully supports the version of the complainant. The occurrence was also witnessed by the neutral witnesses. The injury sustained by injured Naseem is on vital part of his body. After the occurrence, the respondent decamped from the spot and at the time of arrest a 12-bore rifle was recovered from his personal possession and it was sent to the FSL alongwith the crime empties, recovered from the spot, its report was received in positive.

6. Perusal of the impugned order reflects that it is not a speaking order. No doubt, the courts are always slow to cancel bail, already granted by the courts of competent jurisdiction, however, if proper grounds do not exist, then the bail is liable to be cancelled. The impugned order by its nature appears to be perfunctory and also lack of reasons, therefore, on no conceivable principle, such a slipshod order can be sustained. There is substance in the contentions of learned counsel for the petitioner.

7. For what has been discussed hereinabove, this petition is allowed and the

bail granting order of the learned lower court dated 10.10.2019 is set-aside and the accused-respondent, present in court, is directed to be taken into custody and sent to the judicial lock up forthwith.

Above are the detailed reasons for short order of the even date.

Announced:  
27.02.2020.

**J U D G E**

/\*Saif\*/