

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

Cr.M B.A. No. 91-M/2017.

JUDGMENT

Date of hearing: **05.05.2017.**

Petitioner:- (Tariq) by M/S Salman Taj & Asad-ur-Rahman, Advocates.

Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and M/S Muhammad Raziq and Aziz Muhammad, Advocates.

MOHAMMAD IBRAHIM KHAN, J.- This petition is the outcome of an FIR No. 253 dated 30.12.2016. The complainant of this case is Anwar Zaib who has narrated his report given to the Noor Zada IHC. The latter being a police official on hearing regarding the firing took place between the parties on 30.12.2016, later an injured was shifted to the Civil Hospital Dargai. The person who being held for firing was present in his house. The complainant himself was charged in a cross case who was held with Kalashnikov alongwith chargers, was himself found injured on his right leg. It was

learnt from him that while was present outside his house, his cousins Asad, Tariq and Asif sons of Sultan Zaib came there, out of whom Tariq and Asif were armed with Kalashnikovs while accused Asad was having pistol. All resorted firing on him, it was the fire shot of accused/Petitioner Tariq which proved effective and was hit on his right toe.

2. Prior to, an application for the similar relief was presented by the Petitioner before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Malakand at Dargai, which was dismissed on 01.02.2017.

3. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned State counsel, record with their assistance gone through.

4. Learned counsel for the Petitioner relied on 2016 YLR 865 (Peshawar) " Naik Amal vs the State and another", 2017 YLR 93 (Gilgit-Baltistan Chief Court) " Mir Nawaz vs the State", 2012 P Cr. LJ 1883 (Peshawar) "

Khan Zada vs the State and another", 2007 P Cr. L J 1667 (Peshawar) "*Bahadur Said vs the State and another*" and 2012 P Cr. LJ 1560 "*Shahid Raziq alias Shahid vs the State*" and prayed for the grant of bail in favour of accused/Petitioner. Inversely learned counsel for the complainant referred to 2008 SCMR 678 "*Muhammad Rafique vs the State*", 2004 P Cr. LJ 962 (Lahore) "*Liaqat Ali vs the State*", 2003 YLR 2131 (Karachi) "*Jumman alias jummo vs the State*", 2006 P Cr. LJ 371 (Lahore) "*Yaseen vs the State*", 2013 YLR 1133 (Lahore) "*Muhammad Ashiq vs the State and another*", PLD 2014 Peshawar 108 "*Usman vs Mushtq Ahmad and another*", PLD 2007 Karachi 336 "*Amjad Jawed vs the State*", PLD 2007 Karachi 344 "*Abdul Rehman vs Mst. Hakim and another*", 2006 P Cr. LJ 372 (Federal Shariat Court) "*Abdul Jabbar vs the State*", 2004 P Cr. LJ 962 (Lahore) "*Liaqat Ali vs the State*", NLR 2009 Criminal 175 "*Sadullah vs the State*" and 2008 SCMR 678 "*Muhammad Rafique vs the State*". In the

light of wisdom contained in these dictums of the Hon'ble superior Courts prayed for utter dismissal of the bail application.

5. Just after the occurrence, the Petitioner was apprehended by the police officials, whose card of arrest is dated 30.12.2016. The Petitioner is named in the First Information Report, who alongwith, while sharing common intention of his brothers he is charged for effective firing upon the complainant. Keeping the nature of the injury being inflicted to the complainant, the dictum laid down in the judgment cited as **NLR 2009 Criminal 175 titled as "Sadullah vs the State"**, reads as under:-

(c) S.324. Fact that injury to complainant was not on vital and sensitive part of his body would, as such, bring the case of accused outside embargo of S. 497 (1) which would disentitle accused to grant of bail.

It has been held in **2008 SCMR 678** titled as "**Muhammad Rafique vs the State**" that *"accused was attributed role of direct firing at the complainant who had sustained injuries on the lower part of his body. Fact that there was no*

injury on the sensitive part of the body of the complainant, would not as such bring the case out of the purview of the prohibitory clause of S. 497 (1) Cr. P.C."

6. Admittedly this is a cross case of the case FIR No. 254 dated 30.12.2016 registered under sections 302,34 PPC at Levy Post Sakhakot. In the cross case complainant of this case has been refused bail. Parties are cousins inter se, therefore propriety demands that if one party in a cross case has been refused bail then similar treatment should be given to the other party, if there are reasons to believe that the party seeking bail per role does not entitle him to bail.

7. In view of the above, this Petition for the grant of bail has got no force, which is hereby dismissed.

Announced
Dt: 05.05.2017.

JUDGE