

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

Cr.M/BA NO.706-P/2017.

JUDGMENT

Date of hearing. 15.5.2017

Petitioners: (Nawas Khan) by Barrister M. Zahoorul Haq, Advocate.

Respondents: (The State and another) by M/s Mian Arshad Jan AAG & Maqsood Anwar Aziz, Advocate.

WAQAR AHMAD SETH, J.- Petitioner, Nawas Khan

son of Abdur Rahim, seeks bail in case FIR No. 868 dated 30.8.2009 under Sections 302/324/34 PPC registered at Police Station City Mardan. He has been refused bail by the learned Additional Sessions Judge-IV, Mardan vide order dated 28.2.2017; hence, the instant petition for the same purpose.

2. On 30.8.2009, Azizullah complainant lodged a report to the effect that there was a quarrel in the house of accused-petitioner etc, who is his neighbours, and for the purpose of pacification, he went to his house and when returned to his house, the accused-petitioner along with Arif (acquitted accused) armed with firearms came and

made firing at him, as a result of which, he and his relative Sultan got hit and injured. The occurrence was witnessed by injured Sultan and people present there. Subsequently, the relative of complainant Sultan succumbed to his injuries and Section 302 PPC was added in the F.I.R.

3. Arguments heard and record perused.

4. Perusal of the record reveals that no specific role of firing has been attributed to any of the accused. Petitioner's co-accused Arif, after his arrest, was put on trial and acquitted of the charge vide judgment dated 26.6.2014. Except for abscondence, the learned counsel for the complainant could not point out any additional evidence against the petitioner, which could prima facie distinguish his case with that of the acquitted co-accused. The Court, while considering the petitioner's plea of bail, could not ignore the acquittal of co-accused vis-à-vis the merits of his case. In the case of **Jam Sadiq Ali vs State (DB) (1989 P.Cr.L.J 1910)** even bail before arrest of the accused was confirmed on the sole ground that his co-accused in murder charge was acquitted. The Karachi High Court in **Nawab**

Ali vs State (DB) (2003 YLR 113) has observed that the case of accused was identical to the case of co-accused, who had been acquitted on similar charge and his abscondence could not be treated as a bar to his release on bail. The same view was reiterated in **Muhammad Iqbal Solangi vs State (DB) (PLD 2004 Kar. 377)**. Therefore, in view of the above, the petitioner's plea of bail cannot be thrown at the threshold on the sole ground of abscondance. The rule that fugitive from law 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 because abscondance by itself is not a pointer towards the guilt of an accused. 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)**.

5. Resultantly, this bail application is accepted and the accused-petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 400,000/- (Rs. Four lacs) with two sureties each in the like amount to the

satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

Announced.
15.5.2017

J U D G E

Nawab Shah