

THE PESHAWAR HIGH COURT,
PESHAWAR

[Judicial Department].

Cr.Misc./ BA No1637-P of 2015

JUDGMENT

Date of hearing _____ 26.10.2015 _____.

Appellant-Petitioner _____

Respondent _____

MUHAMMAD YOUNIS THAHEEM, J:- Having

unsuccessful in obtaining bail from the two courts below the accused/ petitioner Sabir Shah, involved in case F.I.R No.366 dated 27.06.2014 under sections 302/324/452/34 PPC, Police Station Cantt: Kohat, has come to this Court, through counsel, for the same relief.

2. Brief facts of case, as per FIR are that on 27.06.2014, Injured complainant reported the matter to the effect that at 01.30 A.M at night they were all

sleeping at their home, but woke up on hearing of footsteps in the vacant area of his first floor of the house. Muhammad Ibrahim shouted as to who was there and at this shout one of the accused first threatened him to keep silent and when the deceased switched his light on. All the persons made firing upon him with firearms, due to which he got hit and died on the spot. The complainant and his mother started crying for his help. Accused also started firing at them. The complainant reported that one of the accused stuck him with butt of his pistol on his head, due to which he got injured and in response, he picked up his pistol from below his pillow and started firing upon the accused. The accused thus starting running back from the spot and fled away. In the meanwhile their neighbor also reached to the spot and they also witnessed the deadbody of one of the assailant, which was lying on the roof top. As per complainant he had made firing

upon accused/ persons but he did not know that the deceased accused was hit from his firing or from firing from his co-accused. On the same day the other two persons namely Usman and Aslam were also arrested in injured condition, who during interrogation verified the presence of deceased Umer and rule in the reported occurrence. One mobile set was found by the local police from the place of occurrence owned by the deceased assailant Umer and on search of its SIM data it was found that the deceased assailant Umer had made regular conversation with the accused/ petitioner Sabir Shah at the time of occurrence, due to which he was also implicated in the instant case.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the accused/ petitioner is charged in the instant case on the sole ground of SIM data recovered from deceased assailant Umer and as the accused/ petitioner was in

regular contact with deceased Umer at the time of occurrence. Perusal of the record shows that the data of SIM recovered from the spot owned by deceased assailant Umer, does not tally with the CDR report. Further the complainant has not charged the accused/ petitioner in his first information report nor after his arrest any identification parade was conducted. Moreover, no incriminating article recovered from his possession or on his pagination, hence, the case of accused/ petitioner falls within the ambit of further inquiry within the meaning of section 497 Cr.PC.

5. The contention of learned counsel for complainant that bail of two accused has been refused, hence, the present accused/ petitioner is not entitled for the same concession. Suffice it to say that the role of present accused/ petitioner and that of co-accused is not at par with, hence, the contention of complainant is repelled.

6. Moreover, as is evident from the record, in the present case the investigation is complete, the case is ready for trial and as such the accused/petitioner is no longer required to the local police for further interrogation of the case, therefore, no useful purpose would be served by keeping him behind the bars.

7. In view of above, there is a wide scope of further inquiry into the guilt of accused/petitioner Sabir Shah, resultantly, he is admitted to bail on furnishing bail bonds, amounting to Rs. 300000/- (three lacs) with two sureties each in the like amount to the satisfaction of *Illaq*a Judicial Magistrate/ MOD. The sureties must be local, reliable and men of means.

Announced:
Dt:-26.10.2015

J U D G E