

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH JUDICIAL DEPARTMENT

Cr. M No. 377-A of 2015

JUDGMENT

Date of hearing.....17.08.2015.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- Since this petition for post arrest bail by accused/petitioners, Sana-ur-Rehman and Niaz sons of Muhammad Bashir and bail cancellation application (BCA) by Shamshad Bibi, complainant/petitioner, against their father and co-accused, Muhammad Bashir pertain to the same case FIR No.284 dated 03.07.2015 under Section 302 PPC read with Section 34 PPC, Police Station Oghi, this single order shall also dispose of the connected Cr.M/BCA No.386-A/2015.

2. The FIR was lodged on the report of Mst. Shamshad Bibi, complainant, who reported to Muhammad Zaman ASHO in CH Oghi at 20:30 hours on 03.07.2015 that on the eventful date at 0715 P.M she heard noise outside and when she came out of her house she found accused/petitioners Sana-ur-Rehman and Niaz along with their brother and co-accused Naseer as well as their father Muhammad Bashir, accused/respondent in BCA, abusing and beating her son Fayaz Muhammad with fists and kicks near the mosque and meanwhile Naseer hit her son with his axe on back side of his head. She reportedly raised alarm which attracted Faqir Muhammad son of Amjad and Badri son of Khani Zaman as well as other co-villagers, who saw the occurrence with their own eyes. The accused made good their escape from the scene of occurrence, with whom the complainant had no previous enmity, but the daughter in law

of accused/respondent Muhammad Bashir was trying to allure her son which had caused annoyance to the accused.

3. The Postmortem examination of the then injured, who later on succumbed to the injuries on his way to KTH Mansehra, revealed an incised wound at the junction of head and neck and another lacerated big wound on the occipital region of head. All the accused were arrested in the case, but co-accused Muhammad Bashir has been released on bail on the twin grounds of his old age and infirmity as well as having being attributed the role of giving fist/kick blows, vide order of the learned ASJ-V, Mansehra, dated 24.07.2015, whereby bail was declined to the accused/petitioner in the instant bail petition. It may also be noted here that co-accused Naseer Ahmed, who has been attributed the effective role of axe blows on the head of deceased, Fayaz Muhammad, and who led the police to the

place where the axe was kept after the occurrence and also handed over the same to the I.O is not a petitioner in the instant bail petition. After completion of investigation in the case, the local police/prosecution has submitted complete challan in the case on 10.07.2015.

4. Arguments of the learned counsel for the accused/petitioners, learned counsel for accused/respondent Muhammad Bashir in BCA/Cr.M No.386-A/2015, State Counsel assisted by learned counsel for complainant heard, and record perused.

5. Adverting to the BCA, in the first instance, suffice it to say that apart from the fact that there is no indication of misuse of the concession of bail on the part of accused/respondent, Muhammad Bashir, the accused/respondent was assigned the ineffective role of fist and kick blows to the deceased, and was admitted to bail on the main consideration

of old age and infirmity, which are not belied by the available record. As such, the impugned bail order does not appear to be perverse or capricious, calling for interference by this Court. It may not be out of place to mention here that the accused/petitioner along with his three sons have been implicated in the case, but the effective role of inflicting axe blow on the head of deceased leading to his death was specifically assigned to son of the accused/respondent namely Naseer while the accused/respondent and his two other sons and accused/petitioner in the instant bail petition namely Sana-ur-Rehman and Niaz were ascribed the ineffective role of fist and kick blows to the deceased. Therefore, the bail cancellation application is dismissed.

6. As regards the instant bail petition, it may be pointed out that beside the release of co-accused and father of the accused/petitioners, imputed a similar role

in the FIR, has been released on bail, albeit on the additional ground of old age, and petition for cancellation of his bail has been dismissed vide this order, the medical/P.M report does not show cause of death as fist and kick blows, rather the cause of death has been clearly shown as injuries by sharp weapon to vital organs, thereby making role of the accused/petitioners in the commission of the offence that of further inquiry.

7. Above all, the accused/petitioners have been arrested immediately after the occurrence and are behind the bars since then, without recovery of anything incriminating from their possession or on their piontation or making any confessional statement; while, on the other hand, investigation in the case is complete as complete challan has been submitted on 10.07.2015, implying thereby that the accused/petitioners are no longer required to the

police/prosecution for the purpose of investigation. As such, no useful purpose is going to be served by further retaining the accused/petitioners in jail.

8. Consequently, on the acceptance of the application, the accused/petitioners, Sana-ur-Rehman and Niaz sons of Muhammad Bashir, are admitted to bail, provided they furnish bail bonds in the sum of Rs.100000/- each with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

Announced.
17.08.2015

J U D G E