

JUDGMENT SHEET

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

Cr.M B.A. No. 535-M/2017.

JUDGMENT

Date of hearing: **19.12.2017.**

**Petitioner:- (Azmat Khan alias Jalil) by Mr.
Gauhar Ali Khan, Advocate.**

**Respondent:- (The State through Abdus Sami)
by Mr. Rafiq Ahmad, Astt: Advocate General.**

MOHAMMAD IBRAHIM KHAN, J.- On many

folded reasons, the learned Additional Sessions

Judge/Izafi Zila Qazi Chitral while disposing of

B.A. No. 190/4 of the year 2017 titled as

"Azmat Khan vs The State " observed that the

case of Petitioner is distinguishable from the

accused who have been enlarged on bail. He has

been directly charged in the First Information

Report by assigning him effective role of

causing fire arm injury upon the person of

victim and more so version of the complainant

is duly supported by the medical evidence,

statements of the eyewitnesses recorded under

section 161 Cr.P.C, recovery of fire arm and

motive. Thus, in view of such glaring evidence on the basis of tentative assessment bail petition of the Petitioner stood dismissed on 10.11.2017.

2. Here the Petitioner seeks post arrest bail in case FIR No. 281 dated 27.09.2017 being charged under sections 324,452,147,149,427,336, 337-F (i) PPC & 15 A.A registered at Police Station Chitral.

3. The '*Murasila*' followed by lodging of the First Information Report would reveal that an ASI of PS Chitral on 27.09.2017 at 20.45 hours when was busy during routine *Ghast* of the Illaqa received information that at the vicinity of village Sherai a quarrel has taken place and the injured were shifted to DHQ Hospital Chitral. For confirmation and fulfillment legal proceedings when he reached to the hospital, where in the company of injured Abdul Bari and Abdul Khaliq, the complainant reported him the matter in the manner, that after offering *Isha* prayer he was present in his house when accused/Petitioner Azmat Khan alias Jalil entered in the veranda of their house and on

seeing his brothers Abdul Waseh and Abdul Bari started firing at them. The fire shot hit his brother Abdul Bari on his right arm. The accused was overpowered; the pistol was taken from his possession and locked in the room. In the meanwhile, his relatives Sharafat, Khosh Ahmad, Shafiq, Faiz-ur-Rehman and Tayyab rioted from outside the house of complainant and attacked at his house through pelting stones, as a result of which his uncle Abdul Khaliq was injured besides damage being caused to his house. The accused/Petitioner alongwith other accused decamped from the spot. The occurrence in addition to the complainant was witnessed by Rahmat Ismail Shah and Ali Haider.

4. Having heard arguments of learned counsel for the Petitioner and learned Asstt: Advocate General for the State, record with their assistance gone through. While the complainant on 27.11.2017 appeared before the learned Additional Registrar (Judicial) of this Court and stated therein that he did not want to

engage counsel of his choice and would rely on the arguments of learned A.A.G.

5. Learned counsel for the Petitioner referred to 2004 YLR 431 (Peshawar) “Dilawar Khan v/s The State and another”, 2000 P Cr. LJ 642 (Karachi) “Waris and 2 others v/s The State”, 2004 P Cr. LJ 1862 (Lahore) “Muhammad Yousaf alias Kalay Khan v/s The State” and 2005 YLR 2508 (Lahore) “Muhammad Sohail alias Jugi v/s The State”, thereby prayed for the grant of bail.

6. It appears from the record that though accused/Petitioner has been directly charged in the First Information Report by the complainant assigning him effective role of firing upon the person of injured Abdul Bari. Medico-legal report in respect of the injured Abdul Bari is available on record and perusal of the same would reveal that the injury on his person is on non-vital part i.e. right upper arm with no exposure of bone. It is also yet to establish if the accused/Petitioner had intention

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to kill the injured he would have definitely repeated the fire shots, which element is missing in the present case. Hence in the given circumstances, on this score alone the Petitioner is entitled to the concession of bail. Moreover applicability of section 324 PPC in respect of the accused/Petitioner would come into play after recording of evidence and at the moment he is entitled to be enlarged on bail.

7. In view of the dictum of the Hon'ble superior Courts reported in 2008 SCMR 1621 tilted as "Umar Hayat vs the State and others", where the relevant citation speaks of:-

"Accused had allegedly fired 4/5 shots from his pistol on complainant, out of them one fire hit on his left knee. Said injury fell within the ambit of S. 337 F (v) PPC. Accused had rightly been granted bail Trial Court and High Court while cancelling the same had failed to observe whether bail granting order was arbitrary, capricious or fanciful. Petition for leave to appeal was converted into appeal and allowed and accused was granted bail in circumstances."

In further support in similar circumstances of this case where the injury attributed to the accused was on non-vital part of the body, reference can be given of 2005 YLR 2508 (Lahore) "Muhammad Shoaib alias Jugi v/s The State". The relevant citation of the said ibid judgment is reproduced as under:-

"Injury attributed to accused was not on the vital part of injured. Injuries sustained by injured at the most fell under provision of S. 337 F (2) PPC and did not fall within prohibitory clause of S. 497, Cr.P.C. Accused was behind the bars for the last 9 months and he could not be retained in custody indefinitely as the trial had not commenced. Accused was admitted to bail, in circumstances."

In the Supra judgment of reliance has been placed on the judgment of Hon'ble Supreme Court of Pakistan 1994 SCMR 2051 "Muhammad Afsar v/s The State and 2005 MLD 425 Amanullah v/s State."

8. In view of the above, the Petitioner is enlarged on bail subject to his furnishing bail

bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

9. Before parting with this judgment, it is pertinent to mention here that the observations rendered above are limited only for the disposal of this petition which shall have no bearing on trial of the case.

Announced
Dt: 19.12.2017


JUDGE

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