

JUDGMENT SHEET

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

Cr.M.BA. No. 53-M/2017.

Cr.M. No. 51-M/2017

CONSOLIDATED JUDGMENT

Date of hearing: **03.03.2017.**

Petitioner: - (Muhammad Islam) by M/S Sher Muhammad Khan, Muhammad Raziq Khan and Aziz Muhammad, Advocates.

Respondents: - (the State & 1 another) by Mr. Rafiq Ahmad Astt: Advocate General and Mr. Abdul Qayum, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- By these commutual findings B.A. No. 53-M of 2017 presented by Muhammad Islam accused-Petitioner herein and B.C.A. No. 11-M of 2017 preferred by Petitioner/complainant Tariq Ameen are disposed off. Both the connected Petitions arise out one and same FIR No. 03 dated 16.01.2017 under sections 337 A (i), 337 A (ii), 337 A (iii), 337 L, 354, 34 PPC registered at Levy Post Qalangai, District Malakand.

2. Prior to, the accused/Petitioner Muhammad Islam preferred an application for

the grant of his post arrest bail before the Court of learned Sessions Judge/Zila Qazi Malakand at Batkhela, who vide the order dated 03.02.2017 dismissed the same. In addition to, through the said impugned order accused/Respondent Hamza was granted the concession of bail, hence both these connected bail application and bail cancellation petition have been preferred before this Court.

3. According to the '*Murasila*' followed by First Information Report would reveal that the complainant cum injured by the name of Tariq Ameen in casualty hospital Batkhela reported the matter on 16.01.2017 at 14.20 hours. He in the company of his mother Mst. Hameeda Bibi and his sister-in-law (*Bhabhi*) Mst. Naila when came out from their house. The accused Islam armed with axe and accused Hamza armed '*iron fist hand clasp*' attacked on them. Out of the axe blows of accused Islam his mother Mst. Hameeda Bibi was injured on her head and other parts of her body while from blows of accused Hamza he

was injured on his left ear, whereas his sister-in-law Mst. Naila also received injuries on the fingers of her right hand. The motive behind the occurrence is stated to be a dispute over the landed property. In addition to the complainant-party, the occurrence might have been witnessed by some other people.

4. Having heard arguments of learned counsel for parties and learned A.A.G. for the State, the record gone through with their able assistance.

5. Learned counsel for the Petitioner relied on 2012 YLR 2853 (Peshawar) “*Isfandiyar vs the State through Additional Advocate General and another*”, PLJ 2012 Cr.C (Lahore) 901 (Bahawalpur Bench Bahawalpur) “*Ghulam Sarwar vs the State and another*”, 2014 P C.R. L J 624 (Peshawar) “*Zamin Shah vs the State and another*”, 2012 P Cr. L J 1560 (Peshawar) “*Shahid Raziq alias Shahid vs the State through Advocate General and another*”, 1999 P Cr. L J. 230

(Peshawar) “ Aurangzeb vs the State and another”, 1998 MLD 1184 (Peshawar) “ Ikramullah vs Samiullah and another”, 2015 YLR 2595 (Sindh) “ Abdul Razzaq vs 1st Additional Sessions Judge and another”, PLD 2009 Lahore 312 “ Ali Muhammad vs the state”. In the light of these dictums of the Hon’ble superior Courts prayed for the grant of bail. Inversely learned counsel for the complainant supported by learned A.A.G referred to 1999 P Cr.L J 1677 (Peshawar) “ Babar Khan and another vs the State and another”, 2005 YLR 1215 (Karachi) “ Munawar Hussain Talat vs the State”, 2009 SCMR 174 “ Shameel Ahmed vs the State”, 2013 P Cr. L J 1284 (Peshawar) “ Muhammad Ishaque vs the State”, PLD 1997 Supreme Court 545 “ Imtiaz Ahmad vs the State and 2009 P Cr. L J 251 (Lahore) “ Muhammad Iqbal vs the State and vehemently opposed the grant of bail as an innocent old aged lady has been severely injured on vital parts of her body.

6. Indeed on tentative assessment it has been found that accused/Petitioner Muhammad Islam has been given the role to have inflicted severe injuries upon the person of Mst. Hameeda Bibi on her head and other parts of her body. The injuries have been termed to be grievous in nature. The act of causing injuries upon the person of an old aged lady Mst. Hameeda Bibi was so brutal that she was later on admitted in the Lady Reading Hospital (LRH) Peshawar for treatment and due to such injuries the healing process is still underway and may take a lot of time in recovery being a known diabetic patient. This matter is not a simple case of hurt as the allegations against the accused/Petitioner are that he at the time of commission of this crime was saddled to commit '*qatl-e-amd*' and may be after such injuries would have resulted likely.

7. As far as accused/Respondent Hamza is concerned, he has been given the role of causing injuries upon the persons of injured-complainant Tariq Ameen and Mst. Naheela

Bibi, which are admittedly simple in nature and the impugned order passed by the learned Sessions Judge/Zila Qazi Malakand at Batkhela is in utter appreciation of his role requiring further probe. Thus the impugned order has decorously been passed which calls for no interference.

8. In view of what has been discussed above, both these connected petitions being shorn of merits shall stand dismissed.

9. This Court is however considering an absolute right of each accused involved in such like offences to conclude his/their trial within the shortest possible period. It is as learnt that the case has been put in Court on 07.02.2017. Thus the learned trial Court shall by all means conclude the trial within a period of six (6) months positively, failing which having no objection on the part of learned counsel for the complainant the accused/Petitioner would be entitled to the concession of bail subject to his furnishing bail

bonds in the sum of Rs. 200,000/- (two lacs) with two sureties each in the like amount to the satisfaction of learned trial Court.

10. Before parting with this judgment, it is pertinent to mention here that Applicant/Petitioner has moved an application No. 51-M of 2017 for correction of his name which was inadvertently written as Muhammad Islam instead of Islam Muhammad. Since the mistake is apparently typographical one therefore, this Cr.M is allowed and name of the accused/Petitioner be read as "Islam Muhammad" instead of Muhammad Islam.

Announced
Dt: 03.03.2017.

JUDGE