

copy

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.834-A/2018
alongwith Cr.M No.915-A/2018.

JUDGMENT

Date of hearing.....26-11-2018.....

Petitioner (s)... (Noor Zaman) by Chaudhary Abdur Rauf
Chohan, Advocate.....

Respondent (s)..... (The State etc) by M/S Sardar
Muhammad Asif AAG and Musa Khan,
Advocate.....

SYED MUHAMMAD ATTIQUE SHAH, J.-

Accused-petitioner, Noor Zaman, seeks his post arrest bail in case FIR No.47, dated 24.03.2018 under sections 324/34 of Pakistan Penal Code, 1860 and section 15 AA, KPK, registered at Police Station Banna Allai, District Battagram.

2. The allegation against the accused-petitioner, as reveals from the report of Mahrifatullah, complainant is that he alongwith his co-accused Gul Zaman attempted at his life as well as life of his son wasceem on 23.03.2018 at 08.30 hours in their house

✓

situated in village Pashkal Nehr, within the criminal jurisdiction of Police Station Banna Allai, Battagram, by firing at them.

3. Arguments of the learned counsel for the parties heard and the record perused with their valuable assistance.

4. No doubt, the present accused/petitioner has been directly charged in the present case for firing at the complainant, however, record of the case reveals that co-accused Gul Zaman has been released on bail by this Court vide order dated 23.07.2018. The prosecution has not explained the delay of about two and half hours in lodging the F.I.R. The complainant in his report clearly mentioned the names of two persons i.e. the present accused/petitioner and his co-accused Gul Zaman for commission of offence, however, later on, he disclosed the name of Zaman son Nazir and charged him being co-accused, in his supplementary statement recorded on 05.04.2018, after twelve days of the occurrence. As observed by this Court, while allowing bail petition of co-accused, that statement of injured Waseem was also recorded after twelve days of the occurrence, on 05.04.2018 but no explanation has been given for such delay. It was night occurrence and no source of light has been

mentioned by the complainant. The Medical officer also found blackening around the wounds, which could not be possible from a distance of 10 feet, as shown by the I.O. in the site plan between point No.1 and 5. The '*kalashnikov*' was not recovered on the pointation of accused, rather it was shown to have been recovered from the house of accused/petitioner after eighteen days of occurrence and separate case was registered vide F.I.R No.60 dated 10.04.2018, thus, the evidentiary value of the said recovery and positive report of Firearms Expert would be determined by the learned trial Court after recording evidence of the prosecution. Moreover, the investigation in the case is complete and the accused/petitioner is no more required to the police or prosecution for further investigation. In view of peculiar facts and circumstances, the case of the accused/petitioner, *prima facie*, becomes that of '*further inquiry*', as envisaged in section 497 (2) Cr.P.C.

5. The observations rendered hereinabove, are tentative in nature and it would not prejudice the mind of the trial Court in any manner whatsoever, during trial of the case.

6. Consequently, this bail application as well as Cr.M No.915-A/2015, filed by the accused/petitioner for addition of section 15 AA KPK, are accepted, accused-petitioner is admitted to bail in the above offences, 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 *Ilqa/Duty* Judicial Magistrate, Battagram.

Dt.26-11-2018.


J U D G E

ML.Saleem/²

(SB) Mr. Justice Syed Muhammad Attique Shah