

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB. No.127-D/2020.

Malay Khan
Vs.
The State & another.

JUDGMENT

For Petitioner: **Mr. Inamullah Khan Kundi,**
Advocate.

For Respondent: **Mr. Adnan Ali, Asstt: A.G. &**
Mr. Salimullah Khan Ranazai,
Advocate.

Date of hearing: **14.4.2020.**

SAHIBZADA ASADULLAH, J.- Being booked in case FIR No.148 dated 11.5.2016, registered under Sections 302, 324, 427/34 PPC at police station Mullazai, District Tank, accused/petitioner Malay Khan son of Saleh Khan has approached this Court for his release on bail. Earlier, he was declined bail by the Court of learned Additional Sessions Judge, Tank, vide order dated 12.02.2020.

2. Brief account of the prosecution story, as disclosed in the FIR, is that on 11.5.2016, complainant Ghazi Marjan brought the dead body of his brother Baidullah Jan, on a tractor and made report at 1230 hours in police station Mullazai to the effect that he alongwith his brother Baidullah were on their way from

village Kirri Haider to their home on a tractor driven by his brother, when they reached on metal road, Umer Khel near Mir Ali Koroona, it was about 1130 hours, that accused Ajab Khan and Malay Khan, duly armed with firearms were present there and on seeing the complainant party, they started indiscriminate firing with their respective weapons, as a result of firing of the accused, Baidullah Jan, brother of complainant was hit and succumbed to his injuries on the spot, whereas the complainant luckily escaped unhurt, the tractor was also damaged. After commission of the offence, the accused decamped from the spot. Motive for the offence was stated to be previous blood-feud. On the report of the complainant, the instant case vide the captioned FIR was registered against the accused.

3. Arguments heard and record perused.

4. On scanning of the record, it surfaced that the accused/petitioner has been directly charged for commission of the offence. It is a daylight occurrence, so no question arises with regard to misidentification of the culprits, that too when the parties were known to each other. The deceased had multiple injuries on his body and the Investigating officer recovered seven empties of 7.62 bore from the spot which lend support to the case of the prosecution. It transpires from the record that the tractor of the complainant was taken into

possession which has bullet marks on its body and was damaged in which respect Section 427 PPC was added, which further supports what the prosecution stated.

5. The learned counsel for the petitioner argued the case at a considerable length and submitted that the direction of injuries were from the front whereas the assailants have been shown at points No.3 & 4 towards south which, to him, makes the case of petitioner one of further inquiry. He also tried his best to invite the attention of this Court that how the complainant escaped unhurt when two of the accused were firing at the tractor simultaneously. We are conscious of the fact that while seized of the bail matter, this Court is to make tentative assessment and deeper appreciation of evidence at this stage is unwarranted, which may prejudice the case of either side as is held in case titled *Aamir Bashir and another Vs. The State and another (2017 SCMR 2060)*.

6. Besides the above, the petitioner remained fugitive from law for almost three years and was arrested on 27.01.2019. No explanation whatsoever is available on record which could justify this long abscondence. The co-accused is still at-large, so grant of bail to the accused/petitioner would be a premium to the absconding co-accused.

It is settled law that fugitive from law loses some of the normal rights granted by the procedural and substantive law and noticeable abscondence disentitles the absconder to the concession of bail notwithstanding merits of the case, guidance can be gathered from the cases reported as Awal Khan and others Vs. The State (PLD 1985 S.C. 402) and Raza Khan Vs. State (2013 MLD Peshawar-810).

7. It further transpires from the record that trial against the accused/petitioner has commenced and so far three PWs have been examined. In such situation, releasing the accused on bail can hamper the trial as it is now well settled that accused should not be released on bail when its trial is in progress. In this respect, case titled Said Akbar and another Vs. Gul Akbar and another (1996 SCMR 931) can well be referred.

8. Having said so, the accused/petitioner is not entitled to the concession of bail, hence this petition having no merit stands dismissed.

Announced.
Dt: 14.4.2020.

Kifayat/*

(S.B)

Hon'ble Mr. Justice Sahibzada Asadullah


JUDGE

