

Judgment Sheet
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 394-A/2022.

JUDGMENT

Date of hearing.....**27.06.2022**.....

Petitioner (Zeeshan Hafeez) By Mr. Rabnawaz Khan Tanoli,
Advocate

Respondents (State & another)
The State By Mr. Sajid ur Rehman Khan, Asstt: A.G and none
appeared on behalf of the complainant despite date by court.

KAMRAN HAYAT MIANKHEL, J.-. This petition
has been moved on behalf of the petitioner
namely Zeeshan Hafeez son of Muhammad
Hafeez for admitting him to post-arrest bail till the
final conclusion of the trial in case FIR No.365
dated 07.04.2022 registered under sections
279/322 PPC at the police station, Havelian
District Abbottabad.

2. The prosecution case set up as per the FIR
is that the petitioner while driving Suzuki bearing
registration No.1124/Bannu in rash and negligent
manner ran over Muhammad Muzammil, as result
whereof he lost his life. The petitioner was placed
under arrest on 17.05.2022. Vide order dated
25.05.2022 his post-arrest bail was declined by
the learned Additional Sessions Judge,
Abbottabad at Havelian, hence, this petition.

3. Despite date by court none appeared on behalf of the complainant. Arguments of learned counsel for the petitioner as well as learned Assistant Advocate General heard and record gone through with their valuable assistance.

4. Perusal of record reveals that section 279 PPC bailable and punishment for qatl-bis-sabab provided under Section 322, P.P.C., is 'Diyat' only. According to Section 53, P.P.C., an offender, upon having been found guilty of the charge, may be imposed upon any one or more out of the punishments of Qisas, Diyat, Arsh, Daman, Death either as Qisas or Ta'zir, Imprisonment for Life, Forfeiture of Property and Fine by a Court of competent jurisdiction. Furthermore, under Section 299(e), Chapter XVI of P.P.C., Diyat has been defined as the compensation specified in Section 323, P.P.C., payable to the heirs of the victim and the value of Diyat has been defined in Section 323, P.P.C., as under:-

"(1) The Court shall, subject to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah and keeping in view the financial position of the convict and the heirs of the victim, fix the value of diyat which shall not be less than the

value of thirty thousand, six hundred and thirty grams of silver.

(2) For the purposes of subsection (1), the Federal Government shall, by Notification in the official Gazette, declare the value of silver, on the first day of July each year or on such date as it may deem fit, which shall be the value payable during a financial year."

5. In the judgment reported as **Muhammad Shafi v. The State and another (2020 PCr.LJ 1530)**, has observed that in such like cases it is for the learned trial Court to hold at the trial that whether the evidence adduced by the prosecution would bring the case of accused within the ambit of Section 322, P.P.C., or otherwise; no punishment of any period, except the payment of Diyat, has been provided under Section 322, P.P.C., and no express provision of law exists to show that punishment of Diyat attracts the prohibitory clause of Section 497 Cr.P.C. Furthermore, in the case of **Israr Hussain Shah v. The State and 2 others (2020 PCr.LJ 1164)**, has held that if a provision can be interpreted in two different manners then the one which favours the accused is to be adopted; an accused handed down guilty verdict under Section 322, P.P.C. can

only be kept in confinement, if he makes a default to pay the Diyat amount as is evident from Section 331, P.P.C. The Hon'ble Supreme Court of Pakistan in the dictum reported as **Shah Hussain v. The State (PLD 2009 SC 460)** has held that after the use of word "shall" for the word "may" in Section 382-B, Cr.P.C, at the time of passing the sentence it is mandatory for the trial Court to take into consideration the pre-sentence custody period of the accused. The apex court in judgment reported as **2022 SCMR 515**, has held that:-

“From the contents of the crime report, it appears that an offence of qatl-bis-sabab punishable under section 322, P.P.C. is made out other than qatl-i-khata punishable under section 319, P.P.C. However, qatl-i-amd under section 302 does not appear to be made out in the present facts and circumstances of the case. Section 322, P.P.C. falls outside the prohibitory clause of section 497(1), Cr.P.C.1 while section 319, P.P.C. is bailable.”

6. Keeping in view the above legal position, it can safely be held that if an accused charged under Section 322, P.P.C., upon pleading his guilty or after his trial, is convicted accordingly, he can only be kept in confinement in case he commits default in the payment of Diyat amount

and the provision of Section 382-B, Cr.P.C does not apply in such like case, which ordains that "Where a Court decides to pass a sentence of imprisonment on an accused for an offence, it shall take into consideration the period, if any, during which such accused was detained in custody for such offence". As such, incarceration of the petitioner during trial would amount to punishment before his conviction which is against the mandate of law vis-a-vis applicability of Section 382-B, Cr.P.C settled by the Hon'ble Supreme Court of Pakistan in the dictum supra. Moreover, it is settled law that in an offence which does not entail the punishment of imprisonment the accused shall be entitled to bail as of right because if he is refused bail the period as under trial prisoner would amount to a case of double jeopardy.

7. Keeping in view the above legal position, it can safely be held that incarceration of the petitioner as under trial prisoner is not justified as the same would not serve any useful purpose and even in case of his conviction such period cannot be compensated in any manner. Therefore, by allowing this petition, the petitioner is admitted to post-arrest bail subject to his

furnishing of bail bond in the sum of Rs.1,00,000/-
(Rupees one lac only) with two sureties in the like
amount to the satisfaction of the learned of Illaqa /
Duty Judicial Magistrate, who shall ensure that
the sureties are local, reliable and men of means.

These are the detailed reasons of the
order of even date.

Announced:
27.06.2022.
Aftab PS*/

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