

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

*Cr.Misc. (BA) No. 996-A/2021 with
Cr.Misc.No. 1159-A/2021*

JUDGMENT

Date of hearing.....11.11.2021.....

Petitioner (Niaz) By Mr. Wajih-ur-Rehman Khan Swati, Advocate.

Respondents. (State) By Ms. Fiza Ahmad Nizami, Advocate and
(Complainant) By Mr. Dildar Ahmad Khan Lughmani,
Advocate.

MOHAMMAD IBRAHIM KHAN, J.- This petition has been moved by petitioner (Niaz son of Muhammad Nawaz alias Tamas) for his release on bail in case FIR No. 159 dated 26.08.2021 registered against him under Sections 324 / 337-F(iii) / 34 PPC read with Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 at Police Station Kaghan Camp Mahandri District Mansehra.

2. Allegation against the petitioner, as per first information report, is that he had attempted at the life of the complainant and his brother Abdul Qadeer, however, luckily they escaped unhurt while minor son of the complainant namely, Mehraban, received firearm injury on his abdomen.

3. Having heard the arguments of learned counsel for the parties as well as the learned State counsel, the record was gone through with their valuable assistance.

4. Learned counsel for the petitioner while placing reliance on the judgment reported in **1998 P.Cr.L.J 728 [Peshawar]** titled "*Bahadur Khan Vs. Ajmal Khan & another*" vehemently argued that in the instant case as per site plan position firing was allegedly made on the victim from eight (08) to twenty (20) paces while the doctor found charring marks not only on the entry wound but also on the exit wound whereas in the referred judgment firing was made from six (06) paces and charring marks were found on the body of the deceased as per medico-legal report, therefore, bail cancellation petition of the accused therein was declined on this score alone.

5. The learned counsel appearing on behalf of the complainant strongly rebutted the ibid stance of the petitioner and placed reliance on the judgments reported in **2020**

SCMR 1486 titled “*Sheqab Muhammad Vs. The State & others*”, **2021 SCMR 1157** titled “*Ghazan Khan Vs. Mst. Ameer Shuma & another*”, **2021 SCMR 1225** titled “*Noor Aslam Vs. The State through PG and another*”, **2011 P.Cr.L.J 1308 [Peshawar]** titled “*Khial Muhammad Vs. The State through Shaheed Ullah*” and **2019 P.Cr.L.J Note 24 [Sindh (Larkana Bench)]** titled “*Wazeer Ali Vs. The State*”, however, on perusal not even a single judgment was found on the subject wherein besides charring marks from a distance of eight (08) paces on the body of a victim / deceased bail could have been declined to an accused.

6. No doubt the petitioner has directly been charged by the complainant in a promptly lodged FIR and allegedly the weapon of offence has also been recovered from him on his pointation rather report of the FSL regarding crime empties and weapon of offence has been received in affirmative but intriguing aspect of the case is that as per injury sheet, prepared by the police, a single

firearm injury has been found below the umbilicus with bleeding whereas as per medico-legal report two injuries have been found. Besides, the doctor opined that both the injuries i.e. entry and exit wounds have charring marks with no active bleedings, thus, the version of the complainant is not in line with the medical report. Furthermore, as per site plan position, the victim has been shown present at point No.3 while the petitioner has been shown firing from point No.7, 8 & 9. The distance between point No.3 and points No.7, 8 & 9 are eight (08), nine (09) and twenty (20) feet respectively. In the ibid scenario, a question would arise that whether the alleged firing at the most from eight (08) feet can cause charring marks and that too on the entry wound what of talk of its exit wound, which question can only be resolved by the learned trial court after recording evidence, thus, at the moment, the petitioner has succeeded in making a case arguable for the purpose of bail.

7. For what has been discussed above, this petition is allowed and the petitioner is directed to be released on bail provided he furnishes bail bonds in the sum of rupees one lac (Rs.1,00,000/-) with two sureties each in the like amount to the satisfaction of Illaqa / Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

8. Needless to mention that the petitioner has also filed an application bearing No. 1159-A/2021 whereby addition of Section 337-F(iii) PPC has been sought. As the referred section of law has been inserted later on during investigation, therefore, this application is allowed and the ibid section of law shall be deemed to have been included in the main bail petition.

Announced:
11.11.2021.

JUDGE

/*Saif*/