

JUDGMENT SHEET

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

Cr.M.BA. No. 88-M/2017.

CONSOLIDATED JUDGMENT

Date of hearing: **11.04.2017.**

Petitioner: - (Saif-ur-Rahman) by Mr. Sajjad Anwar, Advocate.

Respondent: - (the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and Mr. Misraf Advocate.

MOHAMMAD IBRAHIM KHAN, J.- By this singled-out order Criminal Miscellaneous B.A. No. 88-M of 2017 titled **"Saif-ur-Rahman vs the State & 1 another"**, Criminal Miscellaneous Bail Cancellation Petition No. 2-M of 2017 titled **"Sahib Roz Khan vs the State"** and Criminal Miscellaneous Bail Cancellation Petition No. 14-M of 2017 titled **" the State vs Wali Rahman"** are considered for disposal.

2. All these Petitions pertain to case FIR No. 828 dated 09.10.2015 charged under sections 302, 34 PPC & 15 A.A registered at Police Station Dagger District Buner.

3. Earlier Saif-ur-Rahman Petitioner herein had filed his Petition for the grant of bail before the Court of learned Additional Sessions Judge-II/Izafi Zila Qazi Buner at Dagger, which was dismissed on 18.02.2017. The Petition of Wali-ur-Rahman for the grant of bail was considered who has since been enlarged on bail on furnishing bail bonds amounting to Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of the same learned Court of Additional Sessions Judge/Izafi Zila Qazi-II Buner. For bail cancellation not only the complainant Sahib Roz Khan but the State also moved separate Bail Cancellation Petitions for recalling of the order dated 03.01.2017 on the ground that the said impugned order is perverse, fanciful and without appreciation of the lawful concerns.

4. Pertaining to the occurrence happened on 09.10.2015 at 08.00 A.M the Investigation Incharge of Police Station Dagger received an information that at a place known as

Pahai Chaina Hotel Dost Muhammad Khan a renowned Advocate has been killed by firing at him. The complainant Sahib Roz Khan reported that his uncle Dost Muhammad Khan, Advocate was a practicing lawyer in District Courts Buner. As usual on the doomful day he was on his way to the Courts at Dagger and by that time admittedly the complainant was present in his house. Later, he received an information from one Habib-ur-Rahman that his uncle Dost Muhammad Khan, Advocate has been killed at a place *Pahai Chaina Hotel*, where he was taking tea. There two persons came whose names and place of residence are not known and resorted to firing at Dost Muhammad Khan who was hit, died there and then. At the time this information was received, the complainant rushed to the place of occurrence and found the corpus of his deceased uncle who had received bullets on his left shoulder, left side throat, near the left ear and on his face. Besides some injuries were found on back of his head. By the time this report was made it was said about that

the deceased had no enmity with anyone, however some 4/5 years back son of Niamatullah by the name of Zahid was injured for whom Shoaib and others were charged, who are nephews of the said deceased Dost Muhammad Khan, Advocate. Later those accused being nephews of Dost Muhammad Khan, Advocate were acquitted of the charges. But surely by the time when the report was made the complainant was unaware as to who had killed his deceased uncle Dost Muhammad Khan, Advocate. At the footnote of the '*Murasila*' followed by the First Information Report would reveal that the complainant at the time of making report had himself stated that as and when he received an information regarding the real culprits then on full satisfaction he will charge the accused.

5. Having heard arguments of the learned counsel for the Petitioner Saif-ur-Rahman, learned Asstt: Advocate General for the State, learned counsel for the complainant Sahib Roz Khan and learned counsel for the

accused/Respondent Wali-ur-Rahman, record was delved deep into with their valuable assistance.

6. Learned counsel for the Petitioner relied on 2008 SCMR 1556 " Noor Muhammad vs the State", 2017 SCMR 114 " Ehsan-ul-Haq alias Shani vs the State and others", 2012 SCMR 184 " Allah Ditta vs the State and others", 2013 YLR 381 (Peshawar) " Luqman alias Pehlwan vs Daud and another" and 2008 P Cr. L J 726 (Peshawar) " Saeed vs the State and another" and thereby prayed for the grant of bail. Inversely learned counsel for the accused/Respondent Wali-ur-Rahman referred to 2016 SCMR 676 "Chairman NAB through PGA NAB Islamabad vs Muhammad Khalid", 2016 MLD 2036 (Peshawar D.I. Khan Bench) " Hussain through Mother vs the State and another", 2016 SCMR 18 " Zaigham Ashraf vs the State and other" and 2016 SCMR 1520 " Muhammad Aslam vs the State and others". In the light of these dictums of the Hon'ble

superior Courts prayed for utter dismissal of the Bail Cancellation Petitions. Similarly learned counsel for the complainant Sahib Roz Khan placed reliance on 2004 SCMR 283 "Naseem Malik vs the State", 2006 SCMR 1292 "Raja Muhammad Irshad vs Muhammad Bashir Goraya and others" , 2012 SCMR 1945 " Muhammad Yousaf Butt vs P.C. Abdul Lateef Shar and another", PLJ 2016 Cr.C (Peshawar) 784 " Nisar Muhammad vs State through Additional Advocate General Dar-ul-Qaza Swat and another", 2013 SCMR 385 " Ghulam Ahmed Chishti vs the State and another", 2015 P Cr. L J 628 " Shahid Zafar and others vs the State", PLD 2004 Lahore 829 " Rehmat Shah Afridi vs the State" and PLD 2004 Supreme Court 822 " Sardar Munir Ahmed Dogar vs the State" and thereby vehemently opposed the grant of bail in favour of the accused/Petitioner and also requested for acceptance of his Bail Cancellation Petition preferred against the bail granting order of accused/Respondent Wali-ur-Rahman.

7. Let the time spent on collecting the information and after being satisfaction the complainant Sahib Roz Khan recorded his statement under section 164 Cr.P.C on 16.11.2016. In support of the statement Amir Bahader, Said Zafar Ali Shah and Bacha Khan recorded their statements under section 164 Cr.P.C on the same date before the same Court of learned Judicial Magistrate-II/Illaqa Qazi Buner. These statements reveal that after full satisfaction the Petitioner Saif-ur-Rahman and the accused/Respondent Wali-ur-Rahman have been charged to have hatched the conspiracy while sharing their common intention are said to have committed '*Qatl-i-Amd*' of the deceased Dost Muhammad Khan, Advocate.

8. Although the Investigation Officer in order to link in chain the prosecution evidence even at such belated time after more than one year has wisely tried to connect the Petitioner (Saif-ur-Rahman) with the commission of an offence. The crime empties were marked with 30 bore pistol and being

found similar yet in the wake neither the Petitioner Saif-ur-Rahman nor the accused/Respondent Wali-ur-Rahman are named in the First Information Report even in the site plan being only shown of their presence without holding fire arms to commit *Qatl-i-Amd* of the deceased Dost Muhammad Khan. Thus, at this stage being case of further inquiry the accused/Petitioner Saif-ur-Rahman is entitled to the concession of bail 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 learned trial Court, who shall ensure that the sureties are local, reliable and men of means.

9. Likely the order dated 03.01.2017 favouring the grant of bail in favour of the accused/Respondent Wali-ur-Rahman is in the best interest of justice and the said so called order is neither fanciful, arbitrary or even perverse, so, both the connected cancellation petitions filed by the complainant Sahib Roz Khan and the State respectively are also answered in negative. Above

all, principles for cancellation of bail are quite different from grant thereof. Once bail is granted by a competent Court of law, then it can be recalled only if it is shown that either the bail granting order was perverse or was in utter disregard to the case evidence which is not the case here.

These are the reasons of my short order of even date.

Announced
Dt: 11.04.2017

JUDGE