

Repeating

BEFORE THE PESHAWAR HIGH COURT
BENCH ABBOTTABAD

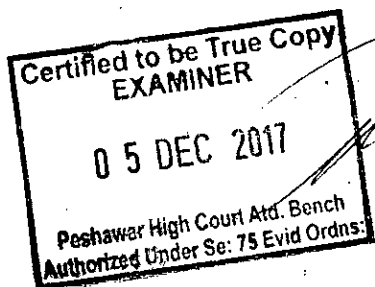


Cr. M No. 661-A of 2017

Mazhar son of Muhammad Riaz resident of
Lambi Dheri, Mansehra, Tehsil and District
MansehraPetitioner

VERSUS

1. The State.
2. Waqas son of Gulab caste Swati resident of
Lambi Dheri, Mansehra...Complainant/respondents.



CASE FIR NO.676 DATED 09.07.2017
UNDER SECTION 302/324/34 PPC
P.S. CITY MANSEHRA

APPLICATION FOR BAIL

Respectfully Sheweth!

1. That, the above-mentioned case was registered on the report of the complainant/respondents *vide FIR annexed as annexure "A"*).
2. That, the accused/petitioners alongwith other co-accused submitted an application for bail in the court of Sessions Judge, Mansehra which was entrusted to Additional Sessions Judge-III, Mansehra for disposal who

FILED TODAY

ADDITIONAL SESSIONS JUDGE
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
9/12/17

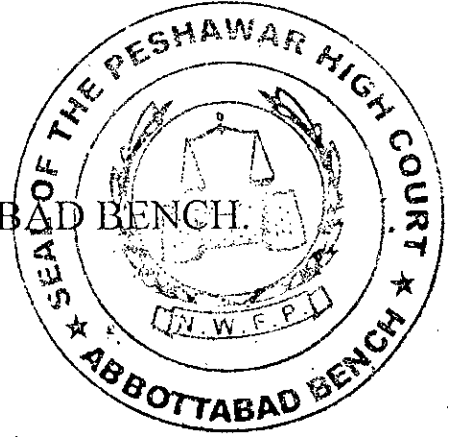
2017/12/19

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M/B.No. 661-A/2017.

JUDGMENTDate of hearing: 06/11/2017

Petitioner (Mazhar) By Mr. Waqar Ahmed Khan Jehangiri,

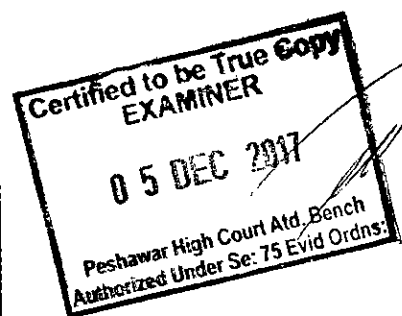
Advocate

State by: Sardar Muhammad Asif AAG.

Complainant by: Mr. Shad Muhammad Khan, Advocate.

SYED ARSHAD ALI, J:- After having unsuccessful in getting bail from the Court of Additional Sessions Judge Mansehra, in case FIR No. 676 dated 09.07.2017 under Section 302/324/34 PPC of Police Station City, Mansehra, petitioner Mazhar son of Muhammad Riaz has approached this Court for the said relief.

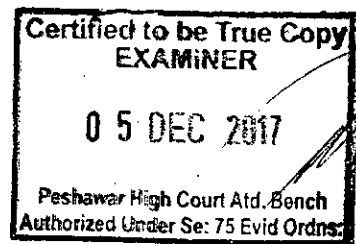
2. Brief facts of the case as per FIR are that on 09.07.2017 at 17:40 hours, complainant Waqas S/o Gulab reported the matter to local police in injured condition, accompanied by his brother Shehzad (who was unconscious), in Emergency Ward of KATH, that he along with his brother were levelling the surface of their landed property by tractor. Meanwhile their relatives Khurram, Ali Raza, Azhar and Mazhar sons of Riaz, who are their relatives, armed with firearms came, started altercation with



them and Khurram made firing upon Shehzad as a result of which he sustained bullet injuries on his head and abdomen who later succumbed to the injuries and died. With the firing of Mazhar, complainant sustained injuries on right side of his abdomen. Rest of the accused inflicted baton blows to them. Occurrence was stated to have been witnessed by Nawaz, Javed, Rustam and others present there. Motive was disclosed to be the dispute over landed property.

3. While Khurram Shehzad S/o Muhammad Riaz reported the matter vide case FIR No. 675 dated 09.07.2017 that he was present in his house when his relative informed him that his father Riaz and relative Javed are quarreling with each other. On this he went to the spot and found Javed, Shehzad, Nawaz, Umer and Waqas were quarrelling with his father. On seeing him, Javed fired at him with pistol as a result of which he sustained injury on left leg. He returned back to his house, took 12 bore rifle of his father and fired at them in self defense, however his relative Hussain snatched rifle from him, while Javed and his brothers left the spot while abusing him. He states that the occurrence was witnessed by Adeel, Shakeel and Siddiq along with others and motive was the dispute over landed property.

4. Learned counsel appearing on behalf of the petitioner has argued that there is a cross version of the same

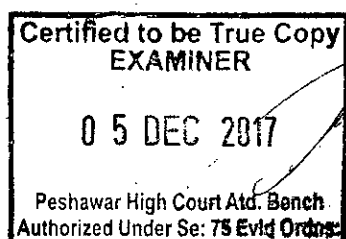


incident brought forward through FIR No.675 which is earlier in time. He further stated that there is conflict between ocular testimony and medical report and has placed reliance on 2016 SCMR 1246, 2017 MLD 44, 2016 MLD 1995, PLD 2009 SC 58, 2014 SCMR 12, 2017 MLD 44.

5. On the other hand, learned counsel appearing on behalf of the respondent has stated that the petitioners are directly charged in the FIR. The place of occurrence is just in front of the house of complainant and medico-legal report is in line with oral allegations. He has placed reliance on 1992 SCMR 501, 2005 SCMR 1402, 1996 PCr.L.J 845 and 2008 PCr.L.J 351.

6. Arguments heard and record perused.

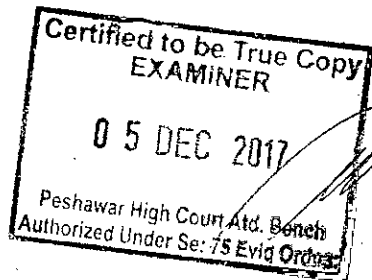
7. The perusal of FIR No. 676 reveals that specific role has been attributed to co-accused Khurram for firing at Shehzad which later proved to be fatal and he died because of that firearm injuries, whereas the present petitioner has been attributed the role of firing on complainant Waqas. The medical report reveals that the complainant Waqas has received three entry wounds on his abdomen, elbow and scapula, which forms vital part of the body. Whereas the complainant of FIR No. 575 alleges that at the relevant time he was present in his house when his relative informed him that his father Riaz and Relative Javed were quarreling.



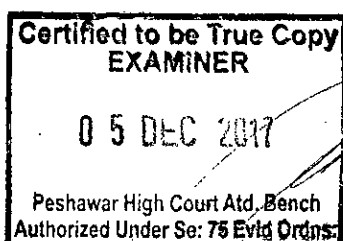
Receiving such information, he went to the spot and found Javed, Shehzad, Nawaz, Umer and Waqas were quarrelling with his father. On seeing him, Javed fired at him with pistol as a result of which he sustained injury on left leg. He returned back to his house, took 12 bore rifle of his father and fired at them in self defense. However, the medical report of Waqas reflects that there is blackening around the injury which he sustained on thigh and no blood was recovered from the place where he allegedly sustained injuries. The close perusal of the site plan would prima-facie show that the complainant party received injuries in front of their house as a result of which one has lost his life and the other sustained injuries on vital part of his body. Since the crime scene is in front of the house of complainant, hence the possibility that the complainant party was being attacked, is discernable from the record. Hence, mere registration of cross version would not entitle the petitioner to the concession of bail as a matter of course.

8.

It is by now settled principle of law that every cross version did not necessarily made the guilt of accused for further inquiry and the Courts in such a case may resort to tentative assessment of material placed before them to form an opinion that whether a case of further inquiry was made out or not. Indeed there are three categories of cross



cases. The first would be in which out of the two parties, prima facie there is a case against one party to have initiated aggression on the other party and the latter has acted in self defence. The party that acted in self defence would be evidently entitled to bail. The second would be in which two opposite parties have, by chance, come across and out of fear have assaulted each other. In that case, both parties would be entitled to bail on the assumption that they have acted in self defence. The third would be in which two opposite parties have indulged in the fight at the spur of moment. In that case, unless evidence is recorded, it has yet to be determined as to which party has committed aggression, hence both the parties are entitled to concession

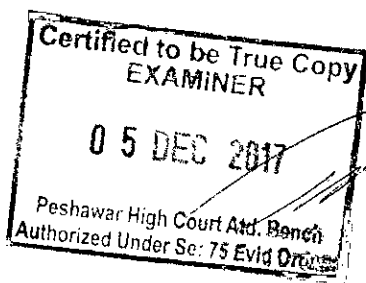


of bail. In support of the above, I am fortified by the judgment of this Court reported as Manawar Din Vs Gul Zaman and other (PLD 1977 Peshawar 59).

9. The rule that the Court is not precluded from tentatively assessing the guilt of each accused even in cross cases while granting bail to one party and refusing to the other party has been elaborately laid down by august Supreme Court in Arif Din Vs Amil Khan and another (2005 SCMR 1402), has held that:-

“Here in the instant case, too, the learned High Court has made a tentative assessment on the basis of two important circumstances. First that, due to acquittal of the complainant party

in another murder case, it was the present accused party which had the motive to retaliate and not the party which already stood acquitted. Secondly, that the assailants of the F.I.R. lodged by the present petitioner, are fully armed with semi-automatic as well as fully automatic weapons. That in spite of the fact that all the three opened fire at the petitioner, they could cause only a simple injury on the stomach. At least such assessment could tentatively be made in view of the given circumstances. It is strongly argued by the learned counsel for the complainant as well as by the learned State Counsel that the possibility cannot be ruled out that the injury caused to the petitioner was either self-inflicted or self-sustained. The learned counsel also added that despite grant of bail in the cross-case to the present complainant party, no cancellation of bail has, at all, been moved by the present petitioner.



While holding that a tentative assessment is permissible at bail stage and mere existence of, cross-case cannot be a ground for grant of bail, we are fortified by our own judgment in Nasir Muhammad Wassan's case 1992 SCMR 501. We, therefore, hold that bail to all the persons cannot be granted simply because of existence cross-version and without making tentative assessment of the given circumstances. In the B impugned judgment, too, the learned High Court has rendered its assessment as tentative and never held it to be conclusive. In the given circumstances, we are of the view that the learned High Court has 'properly appreciated the petitioner's case and has rightly declined a discretionary relief. There being no force in the petition it is hereby dismissed and leave to appeal refused.'

- 10.** In the circumstances stated above and in view of the law laid down by the august Supreme Court of Pakistan, merely because there are cross FIRs or cross cases

against each other, cannot be a ground for grant of bail.

Accordingly the bail petition is dismissed.

11. Before parting, this court finds it necessary to remind the trial court that the observations rendered by the High Court while disposing bail applications are not to be considered during the trial of the accused. In this regard the august Supreme Court of Pakistan in *Shuaib Mahmood Butt Vs. Iftekhharul Haq (1996 SCMR 1845)* has rendered clear guidance, which is to the effect that:-

"However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial court, which is free to appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course it is needless to say, is the function of the trial court".

Announced.
Dt.06.11.2017.


JUDGE

