

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.Misc:BA No. 158-B of 2018.

Jahan Daraz alias Jahan Gully ...VS...The State Etc:

JUDGEMENT

Date of hearing: **07.6.2018.**

Appellant-petitioner : **By Muhammad Nisar Khan Sokari,**

Advocate.

Respondent: **State By Shahid Hameed Qureshi, Addl: AG,**

Others By Iftikhar Ahmed Khan Durrani, Advocate.

SHAKEEL AHMAD, J--- Through this criminal miscellaneous bail application, the petitioner Jeahan Daraz alias Jahan Gully s/o Muhammad Khan seeks post-arrest bail in case vide FIR No.110 dated 13.3.1998 registered U/S. 302 PPC at Police Station sadder Bannu.

2. The prosecution case as disclosed in the FIR are that on 13.3.1998 at 08:15 hours brought his brother Shahbaz Khan in injured condition in the emergency room of civil

hospital Bannu and reported the matter to the police that on the eventful day he along-with his brother Shahbaz Khan and paternal uncle Gul Hyder were present near Masjid Fatma Khel. In the meanwhile, petitioner – accused while armed with riffle appeared and attempted at the life of Shahbaz Khan by firing at him as a result whereof Shahbaz Khan was injured seriously. After commission of the offence, the accused fled-away from the spot. The complainant could do nothing being empty handed. The motive as alleged in the FIR is that Shahbaz Khan injured had purchased house from maternal uncle of the accused over which the petitioner was annoyed. Lateron, Shahbaz Khan succumbed to his injuries, on the same day. at 11:00 AM, hence, petitioner was booked in the FIR.

3. On 10.3.2018 the petitioner was arrested whereafter, he moved an application for release on bail, which was declined by the learned Additional Sessions Judge-III, Bannu vide order dated 11.5.2018, hence, this petition.

4. It is argued by the learned counsel for the petitioner that the occurrence has not taken place in the mode

and manner as stated by the complainant; that site-plan, version of the complainant and PM report if placed in juxta position are contradictory inter alia; that the injured minor namely-Nasir Khan whose presence was shown at point-2 of the site-plan, his presence was not disclosed in the FIR,; that bail cannot be denied merely on abscondence, if the case is other-wise fit for grant of bail.

5. As against that the learned counsel appearing on behalf of the complainant and the learned Addl: A.G representing the State argued that the petitioner has specifically been nominated in the FIR for committing murder of Shahbaz Khan; that the occurrence took place in the broad day light, therefore, there is no chance of mis-identification; that after commission of the offence, accused remained at large for about 20 years, therefore, he does not deserve the concession of bail; that trial has already commenced and charge has been framed against the accused.

6. Arguments heard and record perused with the able assistance of learned counsel for the parties.

7. Perusal of the record reveals that the petitioner has specifically been nominated in the FIR for committing murder of the brother of complainant in a promptly lodged FIR ruling-out the possibility of contemplation, deliberation and consultation. Besides complainant, the occurrence was also witnessed by paternal cousin of complainant namely-Gul Hyder. After commission of offence, the petitioner remained absconder for a period of about 20 years. The medicolegal report supports the contention of the complainant. No doubt in the FIR the petitioner is not charged for causing Fire-arm injury to the minor Nasir Khan, but, subsequently it was disclosed that the minor Nasir Khan also sustained injuries at the hands of the petitioner, and his presence has been shown at Point-2 in the site-plan.

8. Perusal of the record further reveals that the crime in question having been taken place on 13.3.1998 while the petitioner was arrested on 10.3.2018. It is settled law that fugitive from law loses some of the normal rights granted by the procedural and substantive law and noticeable abscondence

dis-entitles the absconcer to the concession of bail notwithstanding the merits of the case. In this respect reliance can well be placed on the cases reported as *Awal Khan and others Vs The State (PLD 1985 SC 402)* and *Raza Khan Vs State (2013 MD 810)*.

9. Moreso, the trial in the instant case has already commenced and charge has been framed against the accused on 16.3.2018. Normally the Courts avoid to grant bail in the case in which either the challan has been put in the Court and the trial is likely to commence short or the trial has begun. In this respect reliance can well be placed on the cases reported as *Mindad Vs. State (1992 SCMR 1448)* and *Syed Akbar and another Vs. Gul Akbar and another (1996 SCMR 931)*.

10. In view of specific charge supported by the eye-witnesses coupled with noticeable abscondence sufficiently provide reasonable grounds to believe that the petitioner is guilty of an offence charged with which falls within the prohibition contained in Section. 497 Cr.P.C, therefore, he is not entitled to the concession of bail. This bail application fails

which is hereby dismissed. However, the trial Court is directed to conclude the trial expeditiously within four (04) months.

Announced,
07.6.2018.

JUDGE