

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**

(Judicial Department)

Cr.M BA No. 247-A/2020

Doraj etc. Vs. The State

Date of hearing: 20.04.2020

Petitioners by: Mr. Shad Muhammad Khan,
Advocate.

State By: Sardar Muhammad Asif, AAG.

Complainant by: Mr. Abdul Saboor Khan,
Advocate,

JUDGMENT

AHMAD ALI, J. Petitioners (Dora S/o Nosher, Hussain S/o Siraj, Satbar S/o Doraj and Ajdar S/o Doraj) through the instant petition, have prayed for their post arrest bail in case FIR No. 247 dated 18.12.2019 u/s 302/311/148/149 PPC, PS, Dubair, (Kohistan Lower).

2. Brief facts of the case are that complainant Gulbaz, accompanying the dead body of his paternal cousin Yousaf Khan, reported the matter to the local police that he along with his cousin were returning home after taking groceries and at about 01:00 PM, when they reached village Sair

Barkalay Ranwalia, accused Siraj S/o Nosher, Ajdar Khan S/o Doraj, Doraj S/o Nosher, Hussain S/o Seraj and Satbar S/o Doraj were present in the way, who were duly armed. On seeing the complainant and deceased, Seraj and Ajdar Khan started firing on Yousaf Khan who sustained injuries and died on the spot. Rest of the accused were present to aid accused Seraj and Ajdar Khan. After the occurrence, accused decamped towards their houses and meanwhile from the house of accused Doraj, firing was heard and on query complainant came to know that accused Doraj has committed murder of his wife Mst. Zahib. The motive for the occurrence was the suspicion of the accused that both the deceased had illicit relations. On the basis of report of the complainant, FIR was lodged against the accused.

3. I have heard the blue streak arguments of learned counsel for the parties and gone through the record with their valuable assistance.

4. Perusal of record reveals that the complainant has attributed specific role to each of

the accused. Accused Seraj and Ajdar Khan have been attributed the role of making effective firing upon deceased Yousaf Khan, accused/petitioners Doraj, Hussain and Satbar have been attributed the role of aiding accused Seraj and Ajdar Khan in the murder of Yousaf Khan and accused/petitioner Doraj had additionally been charged for committing murder of his wife Mst. Zahib.

5. First of all, the case of accused/petitioner Ajdar for the grant of bail is taken. He has been directly charged for making effective firing upon deceased Yousaf Khan. The occurrence is witnessed by the complainant. The medical report as well as recoveries from the spot, strengthen the prosecution version and as per available record, he is prima-facie connected with the commission of offence which entails capital punishment and falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, to the extent of accused/petitioner Ajdar, no case for the grant of bail is made out.



6. So far as the case of accused/petitioners Doraj, Hussain and Satbar is concerned, though they were attributed the role of aiding the main accused in the commission no offence, however, no overt act was attributed to them by the complainant in the commission of offence. The complainant never mentioned that either of them was armed with any weapon or any Lalkara was raised by them to commit murder of deceased Yousaf Khan. In the case of “***Muhammad Shafi & others Vs. the State (2016 SCMR 1593)***”, the august Supreme Court of Pakistan, while allowing bail to the accused in a similar case held that:-



“After hearing the learned counsel for the parties and going through the record it has been observed by us that admittedly both the present petitioners were empty-handed during the incident in issue and they had not caused any injury to any person during the same. According to the prosecution the petitioners had raised a joint lalkara instigating their

co-accused to launch an assault upon the complainant party whereafter as many as three members of the complainant party had been done to death. It is not denied that both the present petitioners are elders of their co-accused who had fired at the deceased and there is a background of enmity between the parties based upon a previous murder. In that backdrop spreading the net wide by the complainant party so as to falsely entangle the petitioners in the present criminal case appears to be a possibility which cannot safely be ruled out of consideration at this stage. The investigation of this case has already been finalized, a Chalan has been submitted, the petitioners' trial has commenced and statements of many prosecution witnesses have been recorded and, thus, physical custody of the petitioners is no longer required at this stage and their continued incarceration is not



likely to serve any beneficial purpose. For all these reasons we have found that the case against the petitioners calls for further inquiry into their guilt within the purview of subsection (2) of section 497, Cr.P.C.

7. The question as to whether the accused/petitioners Doraj, Hussain and Satbar were sharing common intention with the co-accused Seraj and Ajdar, can only be answered by the trial court. At present, tentative assessment of the record shows that no overt act towards commission of offence has been attributed to accused/petitioners Hussain and Satbar and their mere presence on the spot is shown. The allegation of aiding the main accused in commission of offence, also needs further probe, therefore, the case of accused/petitioners Hussain and Satbar squarely falls within sub Section 2 of Section 497 Cr.P.C. entitling them to the concession of bail.

8. Accused/petitioner Doraj has additionally been charged for committing murder of his wife.

The tentative assessment of the record, however, suggests that there is no eyewitness of said occurrence and the father of deceased lady charged the accused/petitioner Doraj for murder of Mst. Zahib after 10 days of the occurrence i.e. on 28.12.2019. However, at bail stage before the learned trial court, he appeared and expressed his no objection upon release of petitioner Doraj on bail. Similarly, the female legal heirs of the deceased Mst. Zahib have also expressed their no objection upon release of petitioner Doraj on bail. Even otherwise, there is no eyewitness of the said occurrence and motive alleged for the occurrence is yet to be proved by the prosecution after recording evidence. Though it is alleged that the accused/petitioner Doraj has not lodged any report regarding murder of his wife, nor could explain the presence of dead body of his wife in his house, however, mere presence of dead body of deceased in the house of accused/petitioner does not ipso facto held the petitioner responsible for the murder and bail could not be withheld merely on the



ground that a person is unable to justify the presence of dead body in his house. Reliance placed on "*Nasrullah Vs. The State (2017 SCMR 724)*".

9. Moreover, the alleged occurrence of murder of wife of accused Doraj took place inside the house of the accused and the complainant has charged the accused/petitioner Doraj on the basis of suspicion alone. The motive for the occurrence is yet to be proved during trial. Moreover, the mode and manner of murder of Mst. Zahib is also shrouded in mystery and makes the case to fall within the ambit of further inquiry as contemplated in Section 497 (2) Cr.P.C.

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10. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case.

Guidance could be sought from case law reported in **1996 SCMR 1845**.

11. Resultantly, this petition is partially allowed to the extent of accused/petitioners Doraj, Hussain and Satbar and they are admitted to bail subject to furnishing bail bonds in the sum of Rs.200,000/- each with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means, while to the extent of accused/petitioner, Ajdar, this petition stands dismissed.

12. These are the detailed reasons for my short order of even date.

Announced:
20.04.2020



J U D G E