

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

(2)

**Cr.M B.A. No. 340-M/2017.**

**JUDGMENT**

Date of hearing: **17.08.2017.**

**Petitioner:- (Arsal Khan alias Khan) by M/S Anwar Hussain and Adil Khan Tahirkheli, Advocates.**

**Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and Mr. Asaf Fashi-ud-Din Vardaq, Advocate, for the complainant.**

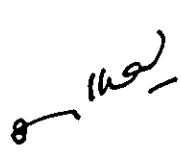
**MOHAMMAD IBRAHIM KHAN, J.-** The

Petitioner Arsal Khan alias Khan, who is son of Amin Gul charged in case FIR No. 585 dated 18.04.2017 under sections 506,427,324,302,337 A (i) (ii), 337 F (i), 34 PPC registered at Police Station Nawagai District Buner and thereby optimistic for the grant of his post arrest bail.

2. Earlier, bail petition of the Petitioner for the similar relief was preferred before the Court of learned Additional Sessions Judge/Izafi Zila Qazi 1st Buner, which was dismissed on 21.07.2017 for all the reasons mentioned therein.

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3. On receiving the information regarding this occurrence the police official Sub Inspector of Police Station Ambela rushed to Emergency Room, where he found the complainant Abdur Rahim in his senses. He was accompanied by his brother Fazal Rahim who was unconscious. Besides, Muhammad Iqbal, Sajjad Ali and Hamid Ali were seriously injured and were lying in the Emergency Room. The report was processed in the manner that the complainant and all other injured persons saw that Amin Gul was cutting trees near the poultry farm owned by the complainant. They restrained him from cutting trees; upon this Amin Gul got infuriated and replied that the property and trees grown upon it are his ownership. The said Amin Gul called telephonically his son Aarsal Khan alias Khan and Ubaid son of Bakhshad to reach there duly armed. Aarsal Khan alias Khan, the present Petitioner in order to frighten the complainant and his associates started firing upon them. Later all the three persons by the name of

Amin Gul, Aarsal Khan alias Khan and Ubaid also started beating the complainant-party. Due to stick blows of the accused-party, the complainant received injuries on his head and on his overall body, while his brother Fazal Rahim was hit on his head and bleeding started from his right ear. Muhammad Iqbal nephew of the complainant also received injuries on his overall body and on his left ankle. Sajjad Ali had also received injuries on his left hand and on his left hand thumb finger. Hamid Ali who is another nephew of the complainant had also sustained injuries on different parts of his body. This occurrence besides being witnessed by all the injured, Noor Hamid has also been cited as witness. Motive behind the occurrence is stated to be a dispute over cutting of trees. Thereby charging all the three accused for murder of Fazal Rahim and other injuries caused to the complainant and his associates.

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4. Having heard arguments of learned counsel for the Petitioner, learned counsel for

the complainant and learned Asstt: Advocate General for the State, record with their assistance gone through.



5. As Petitioner Arsal Khan alias Khan like his father Amin Gul is an accused in multiple cases registered against him, therefore, while relying on the judgment of the Hon'ble Supreme Court of Pakistan cited as 2017 SCMR 279 "Qurban Ali vs the State and others", its citation (b) refers to that when there is a prayer for the grant of bail, criminal antecedents of accused when there are list of different criminal cases and are placed on record, the Hon'ble apex Court observed that it was only seized of the present bail application and the effect/impact of the previous criminal record against accused or his co-accused was not relevant for disposing of the present bail petition. Accused was granted bail accordingly.

→ (he) Conversely, learned counsel for the complainant referred to 2012 P Cr.LJ 345 (Sindh) "Nazar Hussain and another vs the State", which is with regard to constructive liability as

principle and its scope has been highlighted. The other dictum reported in 1999 P Cr.L J 1 (Lahore) "Rana Muhammad Safdar vs Gulzar Ali alias Papoo and other", the principle of vicarious liability of an accused at bail stage has been stressed upon. Thus, learned counsel for the complainant and learned A.A.G. opposed the grant of bail in favour of the accused/Petitioner.



6. In the case in hand, due to brutal nature of the present Petitioner he has been given an effective role that besides being charged for aerial firing to frighten the complainant-party, he alongwith his father and another accused Ubaid is stated to have given stick blows to the deceased, complainant and other injured in furtherance of his common intention shared with other co-accused. There is direct involvement of the accused/Petitioner in the commission of offence and being charged for the murder of deceased Fazal Rahim coupled with inflicting serious injuries to the complainant and his associates. The occurrence

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happened near the poultry farm owned by Fazal Rahim who is the deceased. Apart from the direct charge to have given stick blows, there is recovery of crime stick of the type shown in the photographs holding by the accused/Petitioner to be the crime stick recovered from the spot left behind after the occurrence.



7. There is an order passed in Cr.M B.A. No. 204-M of 2017 of Petitioner Amin Gul passed by the Peshawar High Court Mingora Bench Dar-ul-Qaza Swat, the co-accused being father of the Petitioner was held disentitled to the concession of bail.

8. There are reasons to believe that the accused/Petitioner is charged for an offence, the punishment of which falls within the prohibitory clause of section 497 Cr.P.C. The Petitioner being given an effective role of the type mentioned in the First Information Report, as he has shared common intention with other co-accused within the ambit of vicarious liability and in view of his direct involvement to

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have inflicted stick blows injuries to the complainant-party, out of whom one has lost his life while the others have been seriously injured and more so on similar grounds bail petition of the co-accused Amin Gul has already been declined.

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9. In view of what has been discussed above, this petition has got no force, which is hereby dismissed.

Announced  
Dt: 18.08.2017.

  
JUDGE

Office  
26/08/2017  
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