

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.587-P/2015

Date of hearing: **20.04.2015**

Petitioner (s) : Jamal Faiq by Mr. Ali Zaman, Advocate.

Respondent (s) : Asim Iqbal complainant (nemo) and the State by Mian Arshad Jan, AAG.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner,

Jamal Faiq, being abortive to get the concession of post arrest bail from two Courts below, through this further application, seeks the same concession from this Court, in case FIR No.179 dated 08.06.2010, registered under sections 302/324/34 PPC, at Police Station Lachi, District Kohat.

2. Complainant-respondent Asim Iqbal, despite service, not in attendance, therefore, this petition cannot be kept pending for indefinite period just to procure his attendance, as such learned counsel for the petitioner and learned AAG for the State heard. Record perused with their able assistance.

3. According to report of complainant Asim Iqbal, on 08.06.2010 at 0525 hours, he alongwith his cousin Imtiaz

Khan was present near Anwar Sherin Flying Coach Adda Lachi Bazaar, when in the meanwhile, two unknown culprits riding on a motorbike, duly armed with Kalashnikovs, came there and shot dead Imtiaz Khan deceased and also attempted at his life by firing at him, but he luckily remained unscathed. He did not charge the culprits by names. Later on, on 10.06.2010 i.e. after two days of the incident, complainant Asim Iqbal alongwith his brother PW Ijaz Khan, recorded their statements under section 164 Cr.P.C., wherein, they besides charging co-accused Subha Sadiq, also nominated the present petitioner attributing him specific role of firing on the basis of statement of one Muhammad Ibrar who posed himself as eyewitness of the incident. PW Muhammad Ibrar also recorded his statement under section 164 Cr.P.C. on 10.06.2010 i.e. after two days of the incident, wherein he only assigned the role of firing to present petitioner and attributed the role of driving motorbike to co-accused Subha Sadiq. The questions as to whether Muhammad Ibrar alias Babu, who later on introduced himself as an eyewitness of the occurrence, is a procured witness, and if not, why he kept mum for two days,

and what would be the evidentiary value of his such belated statement, which otherwise is contrary with the version of complainant in his initial report, are yet to be answered by the prosecution during trial, however, at the moment these aspects of the case makes the case of the petitioner that of further probe. The petitioner has not confessed his guilt before any competent Court of law nor has anything incriminating been recovered from his direct or indirect possession, to connect him with the commission of offence. On tentative assessment of the material available on record, reasonable grounds exit, which makes the case of the petitioner that of further inquiry into his guilt. As regard absconsion of the petitioner, as per ratio of judgment of the apex court in case titled, "**Mitho Pitafi Vs The State**" **2009 S C M R 299**, mere absconsion of accused cannot be a ground for refusal of bail when otherwise the case of bail is made out. It is settled law that bail may not be refused merely on the ground that accused is charged for a heinous offence, when otherwise on merits, he is found entitled to concession of bail because any mistaken relief of

bail, can be repaired by convicting the accused, if proved guilty at the trial, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run.

4. For the reasons discussed above, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned. The sureties must be local, reliable and mean of means.

Announced.
20.04.2015.

J U D G E