

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT
PESHAWAR
(Judicial Department)**

Cr.M B.A. No. 2576-P/2017

Rehman Shah V/S The State & 1 another

JUDGMENT

Date of hearing: **04.01.2018**

Petitioner:- (Rehman Shah) by Mr. Qaisar Zaman Advocate.

Respondents:- (The State & 1 another) by Mr. Arshad Ahmad, A.A.G and Mr. Hussain Ali, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- Here is the bail petition preferred by Rehman Shah in criminal case reported vide FIR No. 871 dated 15.10.2017 charged under sections 302,324,148,149 PPC registered at Police Station Bhana Mari Peshawar, thereby looking for the grant of bail after arrest.

2. Earlier, the accused/Petitioner was declined bail by the Court of learned Additional Sessions Judge-XV Peshawar vide his order dated 14.11.2017. The reasons advanced for dismissal of the application are somewhat how that "he is directly charged in the FIR. Recovery

has been effected from his person. Medico-legal report and other supporting documents available on case file supports version of the prosecution in its totality. Pointation memo has been prepared which also supports version of the complainant. At the moment no substantial material existing on the record which may suggest innocence of the Petitioner/accused. The Petitioner being charged for the offence which entails capital punishment and covered under the prohibitory limb of section 497 Cr.P.C.

3. The facts given rise to the lodging of the First Information Report are that Shah Hassan the complainant was present along with the corpus of his brother Shehzad Anwar. There were also injured persons Khaliq Shah and Ajmeer Shah. All of them present at the venue known as Maskeen Abad near Sher Ali Brick Kiln Peshawar. There came the present Petitioner Rehman Shah and his brother Mehmand, Kamran, Haneef, Jehangir, Miras Khan, Hameesh Gul, Zafar Gul, Mir Gul

Nausherawan, Feroz and Malak Irfan. All of them were armed with deadly weapons of the type of Kalashnikovs and on seeing them started firing at them which resulted the death of his brother Shehzad Anwar whereas Khaliq Shah and Ajmeer Shah received bullet injuries. He (complainant) along with others got escaped unhurt. The motive behind the occurrence is property dispute.

4. As apparently, later learned counsel for the parties and learned A.A.G appearing on behalf of the State have manifestly admitted that the present case reported vide FIR No. 871 and another case bearing FIR No. 872 are of cross versions. Here the parties are the same. The occurrence is of the same date and place where almost the same time has been mentioned in both the counter-version cases. Therefore, it cannot be ascertained at this juncture that which version in either case was true, who was the aggressor and who had been aggressed upon as it is yet to be determined by the learned trial Court. In this regard, reliance has been placed

on 2017 P Cr. LJ Note 8 (Peshawar) "Adam Khan V/S The State and another", 2016 SCMR 2046 " Muhammad Ramzan V/S The State and others" , 2014 P Cr. LJ 947 (Peshawar) " Abdullah Khan V/S The State and another", 2013 YLR 404 (Peshawar) " Gul Bacha V/S The State through Advocate Genera and another", 2005 SCMR 1402 " Arif Din V/S Amil Khan and another" and reported judgment of His Lordship Hon'ble Mr. Justice Ishtiaq Ibrahim has also been referred as delivered in Cr. M B.A. No. 109-A of 2017 titled as " Faisal Khan & 3 others V/S The State & Amanullah Khan" decided on 24.03.2017 at Peshawar High Court Abbottabad Bench. In the said judgment reliance has been placed on 1996 SCMR 1845 "Shoaib Mehmood Butt V/S Iftikhar-ul-Haq and 3 others", wherein the following view has been

o-12 formed:

16. In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party

case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed. In the case of *Fazal Muhammad v. Ali Ahmad* (1990 SCMR 391) in cross-cases the High Court granted bail to the accused on the ground that there was probability of counter-version being true as some of the accused had received injuries including a grievous injury on the head of one accused. It was held by this Court that in such circumstances the High Court was right in granting bail and no interference was warranted. In the same context, reference can be made to the case of *Mst. Shafiqan v. Hashim Ali and others* (1972 SCMR 682).

5. Last but not the least learned counsel for rival parties have also affirmed that the complainant of this case has no objection if accused/petitioner from this side is granted bail. In this context reliance has been placed on 2017 SCMR 1730 "Ghulam Abbas alias Gaman and others V/S The State and others". The relevant citation of the judgment speaks of:-

"Present case was a case of two versions and two FIRs and it was difficult to determine as to which party was the aggressor. Counsel for both sides had no objection if accused persons from both sides were granted bail. Bail was granted to accused persons accordingly."

6. Where these cases FIR No. 871 and FIR No. 872 dated 15.10.2017 of the same Police Station Bhana Marai have been held and admitted to be of cross version and in position at this quandary it cannot be ascertained to give specific role to this Petitioner in this cross case.

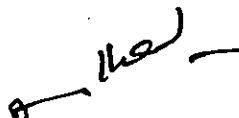
Where the combined study of the facts would fall the role of this Petitioner one of further inquiry within the ambit of sub-section 2 of

section 497 Cr.P.C thereby the grant of bail becomes right of the accused when the complainant of the cross case has no objection on the grant of bail. Thus it would be imperative for the Court to grant bail.

7. Accordingly, on acceptance of this petition the accused/Petitioner Rehman Shah is admitted to bail subject to furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Judicial Magistrate concern, who shall ensure that the sureties are local, reliable and men of means.

8. These are the reasons of my short order of even date.

Announced
Dt: 04.01.2018


JUDGE