

Judgment Sheet

PESHAWAR HIGH COURT, D.I.KHAN BENCH (Judicial Department)

Cr.MB. No.192-D/2021.

Muhammad Suhail

Vs.

The State & others.

JUDGMENT

For Petitioner: M/S Muhammad Ismail Alizai, Zafar Iqbal Awan and Ahmad Shahbaz Alizai, Advocates.

For State: Mr. Rehmatullah, A.A.G.

For Respondent: Syed Tahseen Alamdar, Advocate.

Date of hearing: 07.5.2021.

SAHIBZADA ASADULLAH, J.- Having been booked in case FIR No.510 dated 17.10.2020, registered under Sections 302, 324, 353 PPC read with Section 7 of the Anti-Terrorism Act, 1997, alongwith Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013, at police station City D.I.Khan, accused/petitioner Muhammad Suhail son of Hidayat Ullah has approached this Court for his release on post arrest bail, as the same was declined to him by the Court of learned Judge MCTC/Duty Judge/Acting Sessions Judge, D.I.Khan, vide order dated 26.4.2021.

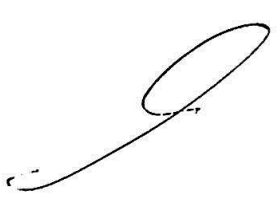
2. The prosecution story as disclosed in the FIR, registered on the basis of murasila, in brief, is that on 17.10.2020 at 12:10 hours, complainant Muhammad Ayub, in injured condition alongwith injured, Mujeeb ur Rehman, Syed Masjood Mehdi and dead body of deceased Muhammad Safdar, reported the matter to Muhammad Ramzan (S.H.O) on the spot to the effect that he alongwith constable Mujeeb ur Rehman No.486 while riding the motorcycle was present in the area for search and strike operation, when received spy information that a suspected person on motorbike was present at Hashmi Chowk Mohallah Qureshian Wala near Ghas Mandi Morr to commit criminal activity, upon which he reached to the spot where he found the said person alongwith 125CC motorcycle, on seeing them, he pulled out a pistol from his trouser's fold and started firing at them, as result whereof, he (complainant), Syed Safdar Shah and Syed Masjood Mehdi sustained injuries, while Syed Safdar Shah fell on the ground; that he (complainant) and Mujeeb ur Rehman tried to overpower the accused, who attacked them with the knife in his possession, which caused him additional injuries; that the accused was overpowered and

disarmed, who disclosed his name as Muhammad Suhail son of Hidayat Ullah, resident of Mohallah Jumma Shah, D.I.Khan; that when the injured Muhammad Safdar Shah was attended to, by then he had expired, meanwhile, the SHO of police station City alongwith police *Nafri* arrived at the spot and the accused alongwith the recovered articles and motorcycle was handed over to him. He charged the accused for the commission of offence.

3. I have heard arguments of learned counsel for the petitioner and the learned A.A.G. assisted by learned counsel for the complainant at a considerable length and perused the record with their valuable assistance.

4. It cannot be ignored that the matter was promptly reported, where the petitioner is directly charged, who was arrested from the spot soon after the incident alongwith the weapons used and the motorcycle owned. The Investigating Officer while inspecting the spot, recovered four empties of .30 bore alongwith blood-stained earth from the places of deceased and the injured.

5. The learned counsel for the petitioner argued the case at considerable length and wanted to harvest the benefit arising out of the statement of father of the deceased, who appeared before the trial Court and did not charge the petitioner for the death of his son, with further submission that one of the injured has effected compromise with the petitioner and is in no mood to prosecute him, which according to the learned counsel makes the case of the petitioner arguable for the purpose of bail. True that the case has been put in Court and some of the witnesses recorded their statements, but equally true that in the episode the complainant who happens to be a police official also sustained injuries who has neither compromised the matter nor has expressed his willingness for release of the petitioner on bail. It is imperative to assess the available material on the file, without having been influenced by what has been stated above. There is no denial to the fact that the petitioner is directly charged and a .30 bore pistol alongwith the knife used were recovered from his possession. The collected empties alongwith the recovered pistol were sent to the Forensic Science Laboratory to ascertain as to whether those were fired



from the recovered pistol or otherwise. The Chemical Examiner after examining the same, opined that the same were fired from one and the same weapon. The injured also received injuries caused through sharp-edged weapon and the recovery of the knife from his possession substantiates the case of the prosecution to a greater extent. The petitioner could not bring on record *mala fide* on part of the complainant and as such at this juncture, no other presumption can be drawn but that the petitioner is *prima facie* connected with commission of the offence.

6. The contention of the learned counsel that the statement recorded by the father of the deceased, who was examined by the trial Court should be taken into consideration to benefit the petitioner even at bail stage, are unfounded. There is no cavil to the proposition that while seized of a bail matter, the Court is to make tentative assessment and deeper appreciation is not warranted, even otherwise the father of the deceased is not the eyewitness of occurrence and no weight could be given to what he stated in favour of the petitioner. True, that bail applications cannot be heard and decided in a vacuum and the Courts of law should apply its judicial

mind to the collected evidence even at bail stage to avoid miscarriage of justice but the present case is an exception, as in case in hand, the material collected by the investigating agency speaks in no other tone but that the petitioner seems *prima facie* connected with commission of the offence and does not deserve the requested concession. The instant bail petition is bereft of merit stands dismissed.

Announced.
Dt: 07.5.2021.
Kifayat/PS *


JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah

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