

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. M (Bail) No. 846-A/2020.

Date of hearing 16.10.2020.

Petitioner/s (Hamid Ali) by Mr. Muhammad Masood ur Rehman Tanoli, Advocate.

Respondent/s (The State) by Raja Muhammad Zubair, AAG and complainant by Mr. Atif Ali Jadoon, Advocate.

MOHAMMAD IBRAHIM KHAN, J. After being entangled in case FIR No. 1050 dated: 05.08.2020 under sections 302/34 PPC registered at Police Station, ***Cantt***, District, ***Abbottabad***, accused/petitioner is looking for his post arrest bail.

2. Prior to that the accused/petitioner has also applied for his post arrest bail to the learned lower forum, where his application stood rejected, hence, the instant petition.

3. Tersely, the facts of the case as mentioned in the first information report are that on 05.08.2020 at 12:25 hours, the complainant Rashid Hussain alongwith injured Sadaqat son of Adalat reported the matter at Emergency room of DHQ, Haripur

by stating that Sadaqat is his employee. That he alongwith said Sadaqat was present in his plot and Sadaqat was levelling the said plot through labors, in the meanwhile at about 12:00 hours, Muzafar son of Kala, Faizi, Shibli sons of Muzafar, Sadam and Hamid came there duly armed and started abusing. Muzafar made *lalkara* to the others to kill all, upon this, Hamid (present petitioner) fired at Sadaqat, who got hit and fell down on the spot, all the accused after the occurrence decamped from the spot by making firing. Hence, the instant FIR.

4. Learned counsel for the parties, learned AAG heard and record available gone through with their valuable assistance.

5. Record in the light of arguments would reveal that in the present case, the accused/petitioner is the person, who is directly and by named charged with a specific role with whom firing one Sadaqat got hit/injured and succumbed to injury later-on. There is no delay in reporting the incident to the local police. The witnesses of the alleged occurrence are also duly

shown/cited in the FIR. There is no denial of presence of the accused/petitioner at the place of occurrence at the time of alleged occurrence. Apart from the above, crime empties have also been recovered from the place of occurrence.

6. In a case reported as **2015 SCMR 655**, titled: *Muhammad Fiaz alias Bhoora Vs. The State*, the Hon'ble Court declined the bail and held as under:-

In the instant case, we are of the considered view that the FIR against the petitioner was promptly lodged in which specific role of firing at the deceased was attributed to the petitioner. The prosecution witnesses examined under section 161 Cr. P.C fully implicate the petitioner. No case of further inquiry has been made out.

7. At the moment, there seems no ill will or false implication on the part of complainant as motive for offence has also been explained in the Murasila/FIR.

8. At the bail stage only tentative assessment of record is required and deeper appreciation is not permissible. At the moment, record available on file prima facie

directly connects the accused-petitioner with the commission of offence which squarely falls within the prohibitory limb of Section 497 Cr. P. C.

9. Needless to mention here that the observations made above are purely tentative in nature and should in no way prejudice the case of either party during trial. In this regard, reliance is placed on case law reported in **(1996 SCMR 1845)** wherein it has been held that:-

“However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course, needless to say, is the function of the trial Court”.

10. In view of the above stated facts and circumstances of the case, the accused/petitioner has not made out his case arguable for the purpose of bail, therefore,

he is not entitled to be released on bail,
hence, the instant bail petition, being bereft
of merit, is dismissed accordingly.

Announced.

16.10.2020.

Tahir P/Secretary.

J U D G E