

JUDGEMENT SHEET

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH**

(Judicial Department)

Cr.Misc:/BA No. 291-B of 2015.

Murad Ali Vs The state etc

JUDGEMENT

Date of hearing _____ 11.12.2015 _____

Appellant-Petitioner: **Murad Ali by Mr. Rasheed
Khan Dirma Khel & Anwar-
ul-Haq Advocate.**

Respondent: **By Pir Liaqat Ali Shah &
Muhammad Ashraf Khan,
Advocate.**

**State By Mr. Saif –u Rehman
Addll: AG.**

IKRAMULLAH KHAN, J.- Accused/ petitioner, Murad

Ali, involved in case F.I.R No. 527, dated 09.08.2015,

under sections 302/324//34 PPC of Police Station, Lakki

Marwat, was refused bail by the learned Additional

Sessions Judge-IV, Lakki Marwat, vide its order dated

21.11.2015. He has moved this further application through his counsel for the same relief.

2. The allegations against the accused/ petitioner, as per F.I.R, referred to above, are that on 09.08.2015 at 0730 hours, complainant Malik Zafrullah reported the matter in the Civil hospital, Lakki Marwat that on the eventful day, at 0635 hours, he alongwith other deceased Ihsanullah, injured Fidaullah, his brothers, proceeded to **“Maila Bazar”** Lakki Marwat for purchasing house hold articles; that at some distance from their house, at matled road Michan Khel to Begu Khel near house of complainant towards Muhallah Michan Khel, accused/petitioner Murad Ali alongwith other accused Mirzali, armed with kalashnikovs while Taj Ali Khan armed with repeater residents of Michan Khel were already standing there; that on seeing complainant party, all the accused started firing at them with their respective weapons with intend to commit their qatl-i-amd, resultantly, from firing of accused/ petitioner Murad Ali,

Ihsanullah (brother of complainant), while from the firing of accused Mirzali, Fidaullah, his other brother were hit, while he (complainant) luckily escaped unhurt. Accused decamped from the spot. When he attended his brother Ihsanullah, he was expired there and then, while his other brother Fidaullah was got injured. Motive is stated to be a dispute of landed property in between them. Hence all the accused were booked in FIR, *ibid* for the said offence.

3. I have heard the exhaustive arguments of the learned counsel for the parties, A.A. G for the state and have gone through the record with their valuable assistance.

4. The objection against the petitioner is that he has been charged specifically by name for "*Qatl-i-amd*" of deceased Ihsanullah, whereas the occurrence had been witnessed not only by the complainant but also by the injured PW, who alongwith the complainant in company of the deceased were on the way to market. From the place of occurrence, 47 crimes empties were recovered,

alongwith blood stained earth and 3 crime empties of .12 bore.

5. The post mortem report of the deceased and that of the injured PW, fully prima facie corroborate the version of the prosecution.

6. The petitioner had succeeded twice to get bail before arrest but never appeared before the court of Sessions, however, this court, thereafter not confirming his bail before arrest, was taken into custody by the local police on 21/10/2015.

7. This Court, while confirming bail before arrest of the co-accused in the same case, has already given its findings on merit of the case, in regard to the petitioner in hand. In case in hand, one young innocent person has been murdered while the other one was seriously injured and the petitioner has been attributed specific role of firing at the deceased. The medical as well as rest of the circumstantial evidence, and ocular eye witness accounts of two persons, supports and prima facie

corroborate the prosecution version. Keeping in view, the evidence so far collected by investigating agency, prima facie connect the petitioner with the commission of the offence of "*Qatl-i-amd*", which entails, capital punishment, squarely falls within prohibitory clause of section 497 Cr.P.C.

8. It is by now settled proposition of law, that at bail granting stage, only evidence shall be tentatively assessed and deeper appreciation of evidence is not requirement of law, rather not permissible.

9. The contention of the learned counsel, that, it is a case of two versions and the complainant party, were also charged in the cross FIR No.528 under section 324 PPC at the same police station and the time of occurrence is also the same, where one person from accused side had sustained serious fire Arms injuries, is not conceivable at this stage, for the sole reason, that the complainant of FIR No.528 is not mentioned at any category in the present case. According to the

complainant in case FIR No.528, he was hit by firing of injured PW and other accused therein had made indiscriminate firing but not a single crime empty has been recovered therefrom the alleged place of occurrence of cross FIR No.528.

10. The record of cross FIR No.528 is also placed in this case, whereas the place of occurrence, in both the alleged occurrence is different. A road is existing between every two alleged place of occurrence.

11. Mere plea of cross version, could not be a ground for release of an accused, however, the complainant of cross FIR No.528 had not stated a single word, in regard to all the accused, mentioned in the instant case. The complainant in case FIR No.528 has also not disclosed anything in regard to the present occurrence and not related by any degree with the present accused.

12. Any how as that it may be, that there is another case FIR, against the PWs of this case and they

are on bail, the non-recovery of crime empties, blood stained earth, therefrom the alleged place of occurrence, as pointed out to the investigation officer, in cross FIR No.528 creates serious doubts, in regard to the time and place as alleged therein, which would be properly dealt with by trial court. Presently, the petitioner is involved and prima facie, connected with a serious offence of “*Qatl-i-amd*”, and all the surrounding facts and circumstances, fully supported the prosecution version.

13. Therefore, for the reasons mentioned herein above this petition is dismissed accordingly.

Announced.
Dt:11.12.2015

J U D G E

A/Awan

