

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.MBA.No.308-D/2017

Saleemullah....Versus...Asmatullah and another

JUDGEMENT

Date of hearing: **10.11.2017.**

Appellant-petitioner by M/S Saifur Rehman Khan and Inam

Ullah Khan Kundi Advocates.

Respondent By:- M/S Ahmad Ali Khan Marwat Advocate and

Adnan Ali Khan AAG.

SHAKEEL AHMAD, J.- Through this Cr.MBA.No.308-D/2017, the accused/petitioner Saleemullah seeks post-arrest bail in case FIR No.218 dated 23.8.2017 registered under Sections 302/324/148/149 P.P.C at Police Station Shaheed Nawab Khan (Panyala), District D.I.Khan.

2. The prosecution case, as set-forth in the crime report, is that on 23.8.2017 at 1630 hours, the complainant namely Asmatullah son of Abdul Qayyum aged about 38/39 years, in injured condition, alongwith dead bodies of his brother Amanullah, cousin Inamullah and injured Suleman reported the matter to the local police in the hospital at Panyala and stated that on the fateful day, he alongwith his nephew Suleman Khan were present in the thoroughfare street, near shop of one Fazal-

ur-Rehman at Sayed Abad, in the meanwhile, his brother Amanullah and cousin namely Imran s/o Abdul Latif came back from Panyala city on a motorcycle and stopped near them. At about 04:00 p.m. a white colour motorcar boarded by Arshad, Amjad son of Rab Nawaz, Rab Nawaz, Amanullah son of Mehar Khan, Saleem (petitioner/accused), Habib Ullah sons of Mumtaz Caste Jat residents of Khani Koroona came there. They deboarded from the vehicle and started beating the complainant with “*Dandas*” and bricks, thereafter, they picked up repeaters and pistol from their vehicle. Amanullah son of Mehar Khan fired at Amanullah (brother of the complainant) and Saleem son of Mumtaz fired at his cousin Imran with the intention to kill them due to which they sustained injuries and died on the spot, while Arshad, Amjad sons of Rab Nawaz, Rab Nawaz son of Mehar Khan, Habibullah son of Mumtaz fired at the complainant and his nephew, as a result of which his nephew sustained bullet injury while the complainant escaped unhurt, luckily. After commission of offence, the accused decamped from the spot, the complainant party could do nothing being empty handed. The motive, as alleged, is previous scuffle with the brother of the complainant Amanullah and accused Arshad and Saleem. The complainant charged the accused for the commission of the offence.

3. After arrest, the accused/petitioner applied for post-arrest bail, which was declined vide order dated

02.10.2017, by the learned Additional Sessions Judge, Paharpur, D.I.Khan, hence, this petition.

4. It is argued by the learned counsel for the petitioner that the petitioner/accused is innocent and has falsely been implicated in the instant case. He relied upon cross version from the accused side reflected in FIR No.219 registered at the same police station on the same day at 05:00 p.m. against the opposite party for attempting at their lives by firing at them. It was argued that in the presence of the cross case, petitioner was entitled to be released on bail, because Abdul Latif, Shafiullah involved from other side had been released on bail; that no motive against the petitioner has been proved; that version of the alleged eye-witness was discrepant with the FIR; that the cross version was plausible; that ocular version is not supported by medical report and that the injuries sustained do not coincide with either the site-plan or the testimony of the witnesses; that it was not known as to which party was aggressor and which was aggressed and lastly that the petitioner is juvenile.

5. The learned counsel for the respondent/complainant, on the other hand relied upon the FIR which was promptly lodged and seriously challenged the genuineness of the cross-version. It was added that the motive is a fact to be proved at the trial and even if not proved, it would make least difference to the well established prosecution version. He lastly

contended that mere juvenility is no ground to release the petitioner/accused on bail.

6. After having heard the learned counsel on either side at length, I am afraid, I would not be able to so intricately and deeply appreciate the evidence at this stage least it may damage the case of any of the parties involved, at trial. Even otherwise, deep appreciation of the evidence, as demanded by the learned counsel for the petitioner/accused, cannot be resorted to at bail stage.

7. Suffice it to say that the prosecution case and the version of the FIR, on the face of it, supported by injured eye-witness, finds support from the medico-legal report of the complainant and PM reports of the deceased (Amanullah and Imranullah) coupled with the motive.

8. In the instant case, five empties of .30 bore and seven empties of .12 bore were recovered from the spot. The complainant party, in the counter versions, were not killed, only the grandson of the complainant namely Habibullah sustained firearm injuries (as alleged) with no exit wound. They could have immediately gone to the police station, but the same was delayed by an hour despite the fact that the police station was 1½ kilometer away from the spot. The petitioner has specifically been named as an offender for committing murder of Imran. Mere juvenility is no ground to release him on bail.

9. In view of what has been discussed above, there being no merit in the petition, it is hereby dismissed. However, the prosecution is directed to submit complete challan against the accused within one month and trial Court is directed to conclude the trial within four (04) months positively.

Announced.

Dt:10.11.2017

(SHAKEEL AHMAD)
J U D G E