

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.Misc:BA # 339-B of 2017.

Mehmood Zaman VERSUS The State Etc:

JUDGEMENT

Date of hearing: **20.9.2017.**

Appellant-petitioner: **By Fazal Qadir, Advocate.**

Respondent: **State By Shahid Hameed Qureshi Addl:**

AG and Others by Ahmad Jan Khattak

Advocate.

SHAKEEL AHMAD, J--- Through the instant criminal miscellaneous bail petition, the accused / petitioner Mehmood Zaman son of Aseel Khan seeks post-arrest bail in crime report No. 154 dated 18.4.2016 registered U/Ss-302/324/148/149/427 P.P.C at Police Station Sabir Abad, District Karak.

2. Case of the prosecution as set-forth in the crime report are that Shahadat Mir complainant reported the matter to police to the effect that on 18.4.2016, he along-with his sons

namely- NoorNabi, Fazal Rabi, Naeem Ullah s/o Sawab Jan had gone to the Hujra of Mian Nissar Gul to watch a music show. After termination of the program, he and his son Noor Nabi boarded on motor bike while deceased Fazal Rabi, Naeem Ullah and Niaz Mohammad boarded on another motor bike. At about 0130 hours on reaching the spot, accused Najibullah, Mosam, Shah Zaman, Sajid, Zarmat Khan, Mehmood Zaman, Arman Gul, Siddique and Akhtar Zaman, were already present there, appeared they were identified by the complainant in the light of his motor bike, as soon as the complainant passed them, accused started firing on the motorcycle on which the deceased were following the complainant, resultantly, the son of the complainant Fazal Rabbi, Niaz Muhammad, and Naeemullah hit and died on the spot. Accused decamped from the scene of crime, after commission of offence. Motive as disclosed is previous blood feud with Mosam Khan while rest of accused were facilitators. Thus, the accused were booked in the ibid FIR.

3. The learned counsel for the petitioner / accused submitted that at the time of occurrence, petitioner / accused was serving in United Arab Emirates and he was not present on the spot. He drew my attention to the letter dated 25.7.2017 which was written by the Superintendent of Police to the Director Immigration Peshawar to provide the record of the petitioner / accused from 17.4.2016 till date and in pursuance thereof the Deputy Director FIA provided the relevant record showing presence of the petitioner / accused in UAE. He next contended that the plea of alibi raised in the bail matter may not be out-rightly rejected and can be gone into for the purpose of grant or refusal of bail. He lastly argued that there are no reasonable grounds to believe that the petitioner / accused has committed the alleged crime but there is sufficient scope of further inquiry into the guilt of the accused.

4. As against that the learned counsel for the respondent / complainant argued that the petitioner / accused has specifically been named in the FIR for the commission of offence. He next contended that the PM report, site-plan and

version of the complainant, if placed in a juxta position are consistent, inter-alia; he lastly argued that the offence with which the petitioner / accused is charged falls within the prohibition contained in Section.497 Cr.P.C.

5. The learned A.A.G appearing on behalf of the State concedes the contentions of the learned counsel for the petitioner and argued that the plea of alibi of the accused is supported by Pass-port, Tickets and other documents showing presence of the petitioner / accused in UAE during the days of incident.

6. Arguments heard and record perused with the valuable assistance of the learned counsel for the parties.

7. Perusal of the record reveals that the plea of alibi raised by the petitioner / accused , prima-facie, finds support not only from examination of original Pass-port, Shaheen Air Line ticket and IBM travel history report provided by the Deputy Director, FIA, Immigration Peshawar in pursuance of the letter dated 25.7.2017 written by Superintendent of Police (Investigation) Wing Karak. Perusal of the Poss-port reveals

that the accused left Pakistan for United Arab Emirates on 28.5.2015 and came back to Pakistan on 20.02.2017 while the alleged crime took place on 18.4.2016. The plea of alibi taken by the petitioner / accused has not been disbelieved by the prosecution rather it was accepted after due verification from FIA.

8. In case of *Amir Vs: The State reported in PLD 1972 SC 277* it was held that "*for purpose of bail, law not to be stretched in favour of prosecution-Benefit of doubt, if any arising, must go to accused even on bail stage*". Similar view was taken in the case of *Manzoor V. The State (PLD 1972 SC 81)*. These principles so laid down, are based on enunciation of law in interpreting the provision of Section.497, Cr.P.C and broader principle of justice.

9. In the case of *Malik Muhammad Salihin V. Arshad Sidique and two others 1997 SCMR 1829* it was held as under:-

"plea of alibi raised in a bail matter may not be rejected out-rightly and can be gone for the purpose of grant or refusal of bail".

In this respect reference can also be made on the case *Gul Khan V. Asghar Khan* and another *2012 P.Cr.L.J 218*.

10. In view of the above stated facts and circumstances, case of the petitioner Muhammad Zaman clearly falls under Sub Section-2 of Section-497 cr.P.C, therefore, he is entitled to the grant of bail, hence, this petition is allowed and petitioner is granted bail in the sum of Rs.3,00,000/ (Three Lacs) with two sureties each in the like amount to the satisfaction of Illaqa/Judicial/Duty Magistrate who shall ensure that the sureties are local and men of means.

11. The above observations are tentative in nature, which will not prejudice the case at the trial stage.

Announced.
20.9.2017
Imran steno

J U D G E