

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.M.B.C.A. No. 120-M of 2017

JUDGMENT

Date of hearing: **08.03.2018**

**Petitioner:- (Tajbar Khan) by Mr. Fayaz
Muhammad Qazi, Advocate.**

**Respondents: - (the State & 1 another) by
Malak Sarwar Khan, State counsel and
Muhammad Yar Yousafzai, Advocate.**

MOHAMMAD IBRAHIM KHAN, J.- Write up the grounds from Serial (A) to (E) in this petition, here is calling for acceptance of this bail cancellation petition, where the learned Court of Sessions Judge/Zila Qazi Dir Lower at Timergara by his order dated 12.9.2017 allowed the post arrest bail to accused/Respondent No. 2 Jehan Bahadar directing him to furnish bonds in the sum of Rs. 100,000/- (one lac) with two sureties on his involvement in case FIR No. 18 dated 28.3.1981 under sections 302,34 PPC read with 512 Cr.P.C registered at Police Station Khall District Dir Lower.

2. The extracts of 'Murasila' Ex. PW-4/1 followed by lodging of First Information Report Ex. PW-4/2 would reveal that Station House Officer of Police Station Khall upon receipt of clue

that a murder had taken place at the vicinity of *Toormang Dara* for confirmation proceeded to the spot. Where on the way at a place known as *Shakolai* the complainant Ghulam Muhammad reported him the matter that his nephew Faqir Shehzada about two (2) days back went to the house of his sister situated at *Toormang Dara*. Yesterday at evening time, he was present at the house of his brother Shah Zaman when in the meanwhile, Lal Badshah, Shamkai, Azeem, Muhammad Hakeem and Muhammad Yaqoob residents of *Kandao Toormang Dara* brought the corpse of said Faqir Shehzada in a cot. One Muhammad Yaqoob informed him that he was present in his landed property, upon hearing firing when he was attracted to the spot he saw the accused Naseeb-ur-Rahman armed with shotgun Jehan Bahader and Rahim Bahader armed with rifles started firing upon the deceased Faqir Shahzada who at that time was going towards village Patau Gaunai . From firing of these accused, the deceased was hit and died at the spot. The accused after commission of the offence bolted away from the spot. The complainant further stated that he has no enmity with anyone, however, a few days back the deceased had quarreled with the proclaimed

offender and the deceased might have been killed due to this reason.

3. Having heard learned counsel for the Petitioner, learned counsel for the accused-Respondent No. 2 and learned State counsel, record gone through with their valuable assistance.

4. Learned counsel for the Petitioner referred to 2017 P Cr. LJ 1080 (Peshawar Abbottabad Bench) "Ayesha Bibi V/S Talha Mahmood and another", 2018 MLD 176 (Islamabad) "Yasir Khan and others V/S The State and another" and 2018 MLD 72 (Peshawar) "Bakhtiar Khan V/S The State and another" and thereby without any exaggeration and hesitancy prayed for acceptance of this bail cancellation petition in view of long-standing absconsion of the accused/Respondent No. 2 which prevailed over a period of almost near to 4 decades. Learned State counsel being on compromising terms with the learned counsel for the complainant (Petitioner) vehemently supported his arguments and dictums relied upon by him of the Hon'ble superior Courts. On the

other hand, learned counsel for the accused/Respondent No. 2 while responding to the arguments of his opposite counsel at the very beginning submitted that it is a cardinal principle almost settled by the plethora of judgments of the Hon'ble superior Courts that absconsion being primarily a corporative piece of evidence in no way could solely be considered in respect of refusal of bail to an accused when otherwise he is entitled to the same concession on merits being a case of further inquiry. In support of this analogy, he placed reliance on 2012 P Cr. LJ 1119 (Peshawar) "Ahmad Ali Jan V/S Irfan and another", 2010 P Cr. LJ 911 (Peshawar) "Inamullah V/S Zakirullah Khan and another", 2010 P Cr. LJ 1324 (Peshawar) "Mst. Amina Bibi V/S Muhammad Amin and 2 others", 2004 SCMR 231 " Muzafar Iqbal V/S Muhammad Imran Aziz and others", 2010 P Cr. LJ 1648 (Lahore) "Ehsan-ul-Haq V/S Muhammad Khan and another", 2012 YLR 1702 (Peshawar) "Najeeb Ullah V/S Fazal Rabi and another" and 2012 YLR 1942 (Peshawar) Muhammad Ishfaq V/S Sher Ahmad and 3 others".

5. The accused/Respondent No. 2 Jehan Bahadar has been declared proclaimed offender in Sessions trial No. 16 of the year 2000 decided by the Court of learned Additional Sessions Judge Dir Bala Camp Court at Wari on 12.10.2000. He is arrested as per card of arrest on 21.8.2017. It means that accused/Respondent No. 2 has remained fugitive from law for quite handsome period of 38 years and 5 months. It is absolutely a record remaining under absconsion. Where the role attributed to him (Respondent No. 2) is on the same footing as that of co-acquitted accused (Rahim Bahadar) and co-absconding accused (Naseeb Rahman). In this case, there is no eyewitness and the report is lodged on getting information through complainant Ghulam Muhammad by Muhammad Amin Khan SHO. There is delay of more than 30 hours not even been explained. Firing is attributed to three assailants including the accused/Respondent No. 2 Jehan Bahadar but there is only one recovery of crime empty which suggest the act of one of the accused named and charged for the murder of deceased Faqir Shehzada. The most redeeming feature of this case is that the deceased was

buried prior to lodging of the FIR and that too without being examined by a medical expert to establish the cause of death even may be natural or through other reason might occurred leaving a lot of space for further inquiry into the guilt of the accused/Respondent No. 2.

6. Learned counsel for Petitioner is more underscoring and accentuating for the recalling of the order dated 12.9.2017 passed by the learned Sessions Judge/Zila Qazi chiefly the ever long absconsion period of the accused/Respondent No. 2 when certainly was in the knowledge of the holding of trial and acquittal of his brother co-accused Rahim Bahadar. Learned counsel for the Petitioner (complainant) is however principally agreed with scope of further inquiry of the guilt of accused/Respondent No. 2. Thereby when an accused is otherwise entitled as of right to the grant of post arrest bail then mere absconsion for the record period of 38 years and 5 months will not stand as hurdle in release on bail. There are surfeit and over-abundance the dictums of the Hon'ble Superior Courts of Pakistan. Some of

these are:- 2012 SCMR 1137 " Ehsan Ullah V/S The State", wherein the relevant citation speaks of:-

" In a case calling for further inquiry into the guilt of accused, bail is to be allowed to him as of right and not by way of grace or concession. Mere abscondence of accused person may not be sufficient to refuse bail to him."

Similar view has earlier been adopted in a case law cited as 2009 SCMR 299 "Mitho Pitafi V/S The State" in the following manner:-

" High Court as well as the Trial Court had rejected the bail of petitioner on account of his absconsion and not on merit. Validity. Bail could be granted, if accused had good case for bail on merits and mere his absconsion would not come in the way of while granting him bail."

Likewise, keeping same rational in sight the Hon'ble Peshawar High Court Abbottabad Bench formed the following opinion in its recent judgment reported as 2018 P Cr. LJ 153 " Sher Azfal and others V/S The State and others"

"Absconsion of accused. Mere absconsion would not be sufficient when

otherwise a case for bail in view of the peculiar facts and circumstances was made out."

7. In view of all these glaring elements coupled with *ratio decidendi* settled in the above cited dictums of the Hon'ble superior Courts , the learned Sessions Judge concerned very rightly for all the right reasons granted the concession of post arrest bail to the accused/Respondent No. 2 through the impugned order being a case of further inquiry discarding the long-standing absconsion of the accused/Respondent No. 2 being a corroborative piece of evidence.

8. Above all, it is settled principle of law that grounds for cancellation of bail are altogether different from that of grant of bail and once bail is granted by a Court of competent jurisdiction, it is rarely interfered with, unless the impugned order is palpably illegal, arbitrary and perverse or against the record. No such infirmity has been pointed out in the present case.

9. In view of the above, this bail cancellation petition is not worth of any credence, which is hereby dismissed.

Announced
Dt: 08.3.2018


JUDGE

Office
28/03/18
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