

Judgment Sheet

PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB. No.190-D/2021.

Asif Ali
Vs.
The State & another.

JUDGMENT

For Petitioner: **Sh: Iftekhhar ul Haq, Advocate.**

For State: **Mr. Rehmatullah, A.A.G.**

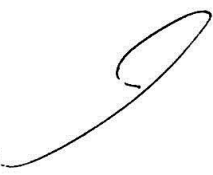
For Respondent: **Mr. Inamullah Khan Kundi,**
Advocate.

Date of hearing: **07.5.2021.**

SAHIBZADA ASADULLAH, J.-- Charged in case FIR

No.40 dated 28.02.2021, registered under Sections 302/324/34 of Pakistan Penal Code, at police station Mullazai, District Tank, the accused/petitioner after his arrest applied for bail before the Court of learned Additional Sessions Judge-I, Tank, which was declined vide order dated 22.4.2021, feeling aggrieved therefrom, the petitioner approached this Court through the instant bail petition.

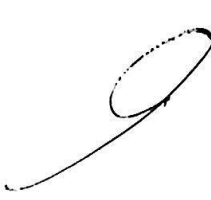
2. The prosecution story as divulged from the FIR, registered on the basis of murasila, is that on 28.02.2021 at 18:10 hours, complainant Mir Hassan



Shah, while present with the dead body of his sister Mst. Nargis Bibi, reported the matter to local police in the Emergency Room of DHQ Hospital, Tank, to the effect that on the eventful day, he alongwith his sister, was on his way back to home after attending marriage ceremony of their relative Ihsan Ullah, when reached to the place of incident, it was about 04:35 hours that the accused/petitioner alongwith his co-accused Ismail and Noor Zaman, duly armed with firearms, appeared on a motorbike, driven by the accused/petitioner and on approaching them, they alighted from the motorcycle and started firing at them with their respective weapons, which resulted into the death of his sister whereas he luckily escaped unhurt. The accused decamped from the spot after commission of the offence. Besides the complainant, the occurrence is stated to be witnessed by co-villagers. Motive for the offence is stated to be a dispute over women folk. Hence, the FIR (ibid).

3. Arguments heard and record perused.

4. The record tells that the deceased received a solitary injury which led to a charge against three real brothers, though the Investigating Officer during spot inspection recovered 12 empties of .30 bore from the



place of incident which were sent to the Forensic Science Laboratory to ascertain as to whether those were fired from one or different weapons. The report received tells that the collected empties were fired from different weapons and the same found favour with the learned Court below. The learned counsel for the respondent submitted that the number of accused charged is substantiated from the fact that the recovered empties were fired from different weapons and that the accused charged are vicariously liable, regardless of the fact that whose fire shot proved effective. It was further submitted that the intent behind Section 34 PPC is nothing but to cover the like situation. True, that Section 34 PPC deals with common intention, but to ascertain as to whose fire shot proved effective, needs recording of pro and contra evidence and no definite finding can be given at this stage. The situation has been dealt with by the apex Court in case titled Awal Khan and 7 others Vs. The State through AG-KPK and another (2017 SCMR 538).

5. It is pertinent to mention that the Investigating Officer when visited the spot and prepared the site plan, the complainant introduced one Mst.

Nazifa Bibi as the eyewitness of the incident, but the report is silent in that respect which is another circumstance which finds favour with the accused/petitioner. The prosecution is yet to explain as to whether in case of .30 bore pistol, blackening is possible, that too, from a distance of 3 to 4 paces. The accumulative effect of what has been stated above leads to an inference that the petitioner's case is arguable for the purpose of bail.

6. True, that while seized of a bail matter, the Court is to make tentative assessment and deeper appreciation is not warranted, but equally true that bail applications cannot be heard and decided in a vacuum and the Courts of law should apply its judicial mind to the collected evidence, though tentatively, to avoid miscarriage of justice and if the doubt is apparent from record, its concession should be extended to the accused/petitioner even at bail stage, as is held by the apex Court in case titled Muhammad Faisal Vs. The State and another (2020 SCMR 971), wherein it has been held that:-

"It is established principle of law that benefit of doubt can even be extended at bail stage".

7. After assessing the collected material tentatively, this Court reaches to an inescapable conclusion that the petitioner has been succeeded in making out a case for bail. Resultantly, this petition is allowed and the petitioner is directed to be released on bail subject to furnishing bail bond in the sum of Rs:2,00,000/- (rupees two lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

8. Above are detailed reasons of my short order of even date.

Announced.
Dt: 07.5.2021.
Kifayat/PS*


JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah

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