

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)
Cr.M BA No.3589-P/2019
Mangal Vs Taj Muhammad & another

Date of hearing: 02.01.2020

Mr. Shabir Hussain Gigyani, Advocate, for the petitioner.

Mr. Rab Nawaz Khan, AAG, for the State.

JUDGMENT

AHMAD ALI, J. Through the instant petition, the petitioner (Mangal) seeks his post arrest bail in case FIR No. 155 dated 12.03.2011 under Sections 302/324/34-PPC, P.S. Nasir Bagh (Peshawar). Same relief was however, declined to him by the learned Trial Court vide order dated 06.11.2019.

2. In essence, the complainant reported the matter to local police to the effect that he alongwith his brothers was present at the spot of occurrence. In the meanwhile, the accused petitioner and his co-accused duly armed with deadly weapons came there and started firing at the complainant party with intention to kill them. As a result of firing, brothers of complainant, namely, Faqir Muhammad & Kachkol (deceased) hit and died on the spot, whereas he remained unhurt. Motive for the occurrence was stated to be a dispute



over pigeons. Consequently, FIR ibid was chalked against the accused.

3. Arguments of the learned counsel for the parties heard and record perused with their able assistance.

2. The complainant has, though, directly charged three persons for the commission of offence, but no specific role has been attributed to the present accused. No incriminating articles have been shown recovered from his possession.

3. Even otherwise, when a general role is attributed to accused, then role of each and every accused with regard to their involvement in the commission of offence will be determined by the learned trial court after recording of *pro and contra* evidence.

4. The record also suggests that in the FIR, father's name of present accused was mentioned as Said Muhammad whereas the actual father's name of accused is Hukam Khan. In this regard the guidelines laid down in case laws reported in 1991 SCMR 959 & 1990 P.Cr.L.J 2055 are worth perusal.

5. As per recovery memo 6 crime empties of 7.62 bore have been shown recovered from the spot of occurrence, but astonishingly same were not sent to FSL, so, at the moment, it cannot be ascertained that same were fired from one weapon or multiple weapons.

The situations lay question mark on the stance of complainant regarding number of accused enrobed in the instant case, which would also require evidence during trial.

6. So far as, contention of the learned counsel for the complainant in respect of long abscondence of the accused-petitioner is concerned, same will hold no field in the circumstances, when case of the accused, squarely falls within the ambit of Sub-Section (2) of Section 497 Cr.P.C, calling for further probe. It is by now settled that in any case falling within the above ambit; the grant of bail must be considered as a rule and refusal thereof is an exception. However, in the instant case, no exceptional circumstance exists to refuse bail to the accused, when the other circumstances, tentatively are in his favour. Reliance can be placed on case laws reported in **2018 MLD 125, PLJ 2017 SC 115, 2016 SCMR 1520, 2016 SCMR 1593, PLD 2012 SC 222, 2015 P.Cr.L.J 1005 & 2012 YLR 2090.** Petitioner is behind the bars since his arrest and is no more required for further investigation.

7. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing

bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in 2008 SCMR 807 "Haji Muhammad Nazir Vs State".

8. Before parting with the order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in (1996 SCMR 1845).

9. In view of the above discussion and on tentative assessment of material available on file, a case arguable for the grant of bail is made out. Resultantly, this petition is allowed and the accused-petitioner, named above, is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

4. Above are the detailed reasons of short order of even date.

**Announced:
02.01.2020**



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Order

AHMAD ALI, J. For the reasons to be recorded later, this petition is allowed and petitioner Mangal, charged in case FIR No. 155 dated 12.03.2019 under sections 302/324/34-PPC, P.S. Nasir Bagh (Peshawar) is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- with two sureties, each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

**Announced:
02.01.2020**



JUDGE

Amjad, PS SB

Mr. Justice Ahmad Ali