

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH**

(Judicial Department)

Cr.Misc:BA No.196-B of 2023

Qudrat Ullah

Vs

The State etc

JUDGMENT / ORDER

Date of hearing 05.5.2023

For petitioner: Mr. Muhammad Rashid
Khan Dirma Khel Advocate

For respondent: Mr. Sultan Mehmood Khan
Advocate

For State: Hafiz Muhammad Hanif,
Addl. A.G.

FAZAL SUBHAN, J.— Through this petition, the petitioner Qudrat Ullah is seeking his post arrest bail in case FIR No.160, dated 26.3.2023 under sections 302/324/148/149 PPC of Police Station Basia Khel, District Bannu.

2. In the instant case complainant Arshad Gul son of Hukum Gul while present with the dead body of his father at D.H.Q Hospital Bannu, reported that on the relevant day of occurrence he along with his father went towards Qudrat Ullah son of Sana Ullah for the return of goat purchased and return of their amount Rs.27500/- and

as a result altercation took place and Qudrat Ullah, Shikayat Ullah and Inam Ullah sons of Sana Ullah, who were duly armed with pistols attacked them and due to the firing of Qudrat Ullah upon his father with the intention to cause his death, he was hit and fell on the ground while the other accused Shikayat Ullah and Inam Ullah also made firing upon him (complainant) with the intention to cause his death but he luckily escaped unhurt and being empty handed he could not do anything. The accused after commission of the offence decamped from the spot and motive for the occurrence was described to be amount of goat.

3. On the same day Qudrat Ullah son of Sana Ullah at 11:05 hours also lodged a report in injured condition at D.H.Q Hospital Bannu that on the relevant day of occurrence i.e. 26.3.2023 they were present in their shop when at 09:45 a.m. Naseem Gul son of Zakeem Khan, Arshad son of Hukum Gul along with 4/5 unknown persons came through rickshaw, out of which Hukum Gul and two unknown persons were armed with knives and attacked him whereas Arshad son of Hukrum Gul made firing with his pistol and Naseem Gul was present in the rickshaw and has aimed his repeater upon them. As a result of their firing Hukum Gul was hit with the

firing of Arshad and at the same time he was also hit on his heel while other companions of the accused also attacked them with knives and bricks, whereafter the accused left the spot. He also described the motive of occurrence to be dispute over amount of goat.

4. With this background of the case arguments of learned counsel for petitioner and that of complainant assisted by learned A.A.G were heard.

5. On tentative assessment of record it is clear that the occurrence has taken place at 09:45 hours which was promptly reported at D.H.Q Hospital Bannu at 10:45 a.m. and in his report the complainant Arshad Gul has specifically charged the petitioner Qudrat Ullah for effective firing upon the deceased with the intention to cause his death. During investigation two empties of .30 bore were recovered from the spot of present petitioner and at the same time the medical evidence prima facie supports the prosecution's version. The petitioner has also made a report to the local police on the same day of occurrence and though it is a question for the trial Court to decide as to whether the occurrence reported by the petitioner has actually taken place and whether the same can be taken as cross version, however, for the time being his injury is on heel of foot and the same is reported to

the local police in D.H.Q Hospital Bannu at 11:45 hours i.e. after the delay of one hour and 20 minutes. The learned counsel for complainant also produced medical report of the petitioner Qudrat Ullah and the nature of injury is mentioned as blunt trauma. Learned counsel for petitioner also produced the injury sheet prepared by the concerned police officer, wherein he is shown to have received three injuries, however, when the medico-legal report is available before the Court which describes the injury sustained by the petitioner to be with blunt weapon then the story of firing by the complainant upon him resulting injury to him and causing death of the deceased Hukum Gul is not prima facie possible, hence there are sufficient material on record to show that petitioner is involved in an offence which falls within the prohibitory clause of section 497 Cr.P.C and it dis-entitles him for the concession of bail at this stage. The august Supreme Court of Pakistan in the case of "Nasir Muhammad Wassan and another-Vs-The state" (1992 SCMR 201) has held that:-

"In these circumstances merely because there are cross F.I.Rs. or cross-cases against each other cannot be a ground for grant of bail. Besides this both the Courts below have

exercised their discretion and refused to grant bail. The Supreme Court is reluctant to interfere with such discretion unless it is exercised contrary to the principles laid down by this Court, is in disregard of the principles governing the administration of criminal justice and/or is perverse. Reference can also be made to Hafiz Khuda Bux v. The State PLD 1988 SC 413, Arbab Ali v. Khamosi and others 1985 SCMR 195, Shahadat Ali v. Mubarak Shah and another PLD 1986 SC 347, and Mst. Bashiran Bibi v. Nisar Ahmed Khan PLD 1990 SC 83. We, therefore, dismiss the petition.”

Similarly, in case titled “Rashid Ramzan-Vs-The State and others” (2022 SCMR 2111), the august Supreme Court of Pakistan has held that:-

“So far as the cross-version is concerned, the learned High Court has rightly noted that a bare perusal of the cross-version reveals that neither the petitioner is mentioned as the one who was present at the place of occurrence nor any claim of right of private defence of person or property has been made on behalf of the petitioner, therefore, no benefit

can be extended to the petitioner. The learned High Court by placing reliance on the judgment of this Court has rightly held that mere existence of a cross-version could not alone be considered a sufficient ground to grant bail to an accused."

6. Thus, in light of the available record and while relying on the judgments of august Supreme Court of Pakistan, it is held that mere lodging of cross F.I.R/cross version is no ground for grant of bail to the petitioner when he is otherwise found connected with the crime falling within the prohibitory clause of section 497 Cr.P.C, hence the petitioner is not found to be entitled for grant of bail. Accordingly this petition is dismissed.

7. Before parting this judgment, it needs no emphasis that prosecution is under statutory obligation to submit challan in the case under section 173 Cr.P.C.

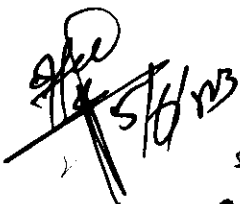
Announced


05.5.2023

Ihsan PS*


JUDGE

(S.B) Hon'ble Mr. Justice Fazal Subhan



SCANNED
05 JUN 2023

Khaliq Khan