

IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr. Misc: BA No.186-B of 2018.

Irfanullah
Vs
The State etc.

JUDGEMENT/ORDER.

W Date of hearing 23.07.2018

Appellant-Petitioner By Muslim Jan Adu

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Respondent State By Pir Hamadullah Shah Adu

Others By Jamad Akhtar Adu

SHAKEEL AHMAD, J.- Through the instant Cr.

Misc.petition No.186-B of 2018, petitioner

Irfanullah S/O Saee-ur-Rahman alias Saki seeks

post arrest bail in crime report No.559 dated

25.11.2017, registered under sections 302/ 324/

109/148/149 PPC of Police Station Yaqoob Khan

Shaheed, district Karak.

2. The prosecution story as given in the crime

report, is that complainant Kamal Khana wife of Khan

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Wali reported to the police at Emergency Ward of Civil Hospital Takht-e-Nasrati that on 25.11.2017 at 0900 hours, she and her brother Wali Khan while coming from house situated in Wanki to Garang Siraj Kjel, accused Shams ur Rehman, Khalil Rehman, sons of Sawab Rehman and accused/petitioner Irfanullah, who were already sitting in ambush, came out of their *Hujra* and started firing at them with the intention to commit their qatl-i-amd with deadly weapons, resultantly she (complainant) was hit and got injured, while her brother Khan Wali was also got hit and died on the spot; that the accused committed the offence on the instigation of Sawab Rehman and Mst. Chanara. Motive as disclosed in the FIR is previous blood feud enmity. Hence her report was culminated into FIR (ibid).

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3. After arrest, the petitioner applied for post arrest, which was declined by the learned Additional Sessions Judge, Karak at Takht-e-

Nasrati, vide order dated 12.6.2018. Hence, this petition.

4. It has been contended by the learned counsel for the petitioner that the petitioner is innocent and has falsely been implicated in the instant case; that from the perusal of the site plan, point No.1 is not visible from points No.2,3, & 4; that the medicolegal report and the MLC of the injured does not support the version of the complainant; that prima facie, there exists no reasonable grounds to believe that the petitioner has committed the alleged offence; that the prosecution case requires further inquiry into the guilt of the accused/petitioner; that at the time of alleged occurrence, accused/petitioner was present in Quetta in connection with his official duty in the School of Infantry and Tactics Quetta Cantonment and this fact has been affirmed during inquiry; that co-accused Sawab-ur Rahman has already been

released on bail by this Court vide order dated 18.02.2018, therefore keeping in view principle of consistency, the accused/ petitioner is also entitled to be released on bail.

5. Conversely, the learned counsel appearing on behalf of the complainant and the learned A.A.G representing the State vehemently opposed the contention of the learned counsel for the petitioner and argued that the petitioner has specifically been charged for committing murder of brother of the complainant; ; that plea of alibi taken by the petitioner is concocted one and afterthought, therefore not worth consideration at this stage; that after commission of offence the petitioner remained at large for a noticeable period; that the trial has already been commenced; that the offence with which the petitioner is charged , falls within the prohibitory clause of Section 497 Cr.P.C, therefore he does not deserve the concession of bail.

6. I have heard arguments of learned counsel for the parties and perused the record with their valuable assistance.

7. Perusal of the record reveals that petitioner is one of the nominated accused, who has specifically been charged for committing murder of brother of the complainant. In the instant incident, the complainant herself sustained bullet injury on her thigh. The perusal of PM report would show that the deceased Wali Khan has sustained multiple injuries on his body. The parties are known to each other, therefore there is no chance of mis-identification. The motive as alleged in the FIR is previous blood feud enmity between the parties. After commission of offence, the petitioner remained at large for quite sufficient time, he was declared proclaimed offender.

8. The role attributed to the co-accused Sawab ur Rahm, who has been granted bail by this

✓ Court, is distinguishable. The record reflects that he has been attributed role of abetement while role of firing at the complainant party was attributed to the accused/petitioner

Adverting to plea of alibi, suffice is to say that it was not taken in the earliest.

10. No doubt plea of alibi like other defence plea taken at bail stage is essentially required to be examined by the Court within a degree of care and caution. This belated plea of alibi, prima facie creates an impression that it was after thought. However, I leave its evidentiary value to be decided by the learned trial Court after recording pro and contra evidence.

ad 11. In view of specific charge supported by the eye-witnesses, medical evidence and unexplained noticeable abscondence sufficiently provide reasonable grounds to believe that the petitioner is guilty of an offence charged with,

petitioner is guilty of an offence charged with, which falls within the prohibitory Clause of Section 497 Cr.P.C.

12. It is pertinent to mention here that after completion of investigation challan has been submitted and trial is likely to commence soon. In such situation, it has all long been settled principle of law, set by august Supreme Court of Pakistan, when the trial is likely to commence or has begun, bail application should not be decided on merits and the matter be left to the trial Court, lest it may prejudice case of either side. In this respect, reliance can well be placed on the cases reported as Muhammad Sadiq & other Vs.. The State (1980 SCMR 203), Muhammad Ismail..VS.. Muhammad Rafique & other (PLD 1989 SC 585), Mian Dad Vs. The State and another (1992 SCMR 1418), Said Akbar and another Vs Gul Akhtar & another

(1992 SCMR 931) and Shahid Farooq Vs..The
State and others (2011 SCMR 1619).

13. For what has been discussed above,
there is no merits in this petition, which is hereby
dismissed.

It is clarified that any observations
made in this order is tentative in nature, confined
only to the extent of bail matter which would not
influence the mind of the trial Court in any manner
who shall decide the case by applying its own
independent judicial mind after recording evidence.

Announced.
23.07.2018


J U D G E.

 24/7/18