

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr: Misc: BA No. 385-B / 2023

Hafeez Ullah Khan.

Versus

The State etc:

JUDGMENT

Date of hearing **13.09.2023.**

For **petitioner:** Mr. Muhammad Rashid
Khan Dirma Khel, advocate.

For the **State:** Mr. Umer Qayum Khan,
Asstt: A.G.

For **respondent:** Mr. Khush Amir Khan
Khattak, advocate.

FAZAL SUBHAN, J.--- Instant is a bail application of petitioner Hafeez Ullah Khan s/o Muhammad Payo r/o Jhangi Killa Pirba Khel, Tehsil Domel District Bannu, who is seeking his post-arrest bail in connection with case F.I.R No.347 dated 28.06.2023 registered u/ss 302/324/34 P.P.C, at PS, Domel, District Bannu.

2. In this case, one Fida Ullah while present with the dead body of his cousin Shah Hussain s/o Abdul Jabbar at Khalifa Gulnawaz Hospital (KGN), Bannu reported that he along

with his cousin Shah Hussain, Hafeez Ullah and Aman Ullah were present near the graveyard of Jhangi Killa Pirba Khel and at that time Shah Hussain and Hafeez Ullah were armed with Kalashnikovs while Aman Ullah was having pistol when in the meanwhile, an altercation started between his cousin Shah Hussain on the one hand and Hafeez Ullah and Aman Ullah on the other hand who started firing upon Shah Hussain with the intention for causing his death and as a result he was hit and got seriously injured, whereafter, the injured was shifted to the hospital but during treatment he succumbed to his injuries. Motive for the occurrence was stated to be altercation prior to the occurrence.

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At the same time, Hafeez Ullah s/o Muhammad Payo reported in injured condition at KGN hospital that at the relevant time of occurrence he was present near the graveyard of Jhangi Killa Pirba Khel when in the meanwhile, Shah Hussain s/o Abdul Jabbar came duly armed with Kalashnikov and on arrival started firing upon him and as a result he was hit and fell on the ground and the persons present on the spot shifted

him to the hospital. The same motive of altercation is stated in the reported.

3. With this background of the case, arguments of learned counsel for petitioner and that of learned counsel for complainant assisted by the learned AAG for the State heard and record gone through.

4. After hearing the arguments and tentatively considering the record, it is clear that two separate reports were lodged in respect of the same incident and time, place and parties involved therein are one and the same. It is a matter of common observation that in such like matters wherein parties involved in affray, they tend to suppress and conceal the actual facts to be brought before the police and it is always difficult for the courts to arrive at a proper conclusion at bail stage as to what actually had happened at the time of occurrence and that which party started aggression and which of the party was aggressed upon and, therefore, in a situation of cross-version the only safe course for the Courts is to extent the benefit of bail to both the parties of the incident and the question of perpetrator of aggression is left for the

determination of the trial court. Though grant of bail in cross-versions is not an absolute rule, however, the story narrated by both the parties always make their case one of further inquiry into the guilt of accused and courts have to lean in favour of grant of bail keeping in view the circumstances of each case.

5. From the material collected during investigation, it is clear that six 7.62 bore empties were recovered from the place of Hafeez Ullah/petitioner, whereas, from the place of deceased Shah Hussain 16 empties of 7.62 bore were collected. The site-plan in both the reports were separately prepared which confirms that the occurrence has taken place near the graveyard of Jhangi Killa Pirba Khel. The medical evidence shows that deceased received one fire-arm injury on his right chest whereas, the petitioner sustained two injuries on his right arm and hand and two injuries on left chest. It is also clear from the available record that prior to the occurrence an altercation took place between the petitioner and the deceased which resulted into the firing upon each other by them, hence, the parties and spot of

occurrence is one and the same and in the incident both the deceased and the petitioner have received serious injuries on their bodies and for all practical purposes the case is of cross-version. In this view of the matter, the superior courts have always granted bail to the accused on the ground of further inquiry into the guilt of the petitioner. In this regard reliance can safely be placed on the judgments reported in *2021 P.Cr.L.J Peshawar (Bannu Bench) 1582*, wherein it has been held:-

"6. -----The moot question for this Court is to determine as to who was the aggressor and who was aggressed upon, which at this juncture is not possible rather the same can better be determined after recording pro and contra evidence. At present this Court is to assess tentatively the available record without touching merits of the case. There is no denial to the fact that both the sides received injuries; and that the place of incident, the time of incident and the persons involved in the episode are one and the same with a dispute over parking of a rickshaw, but with their different versions This fact is alone sufficient to make the case of the petitioner as one of further inquiry."

6. Similarly, in the case of Adam Khan V The State & another reported in *2017 P.Cr.L.J (Peshawar) Note-8*, it has been held:-

" In the present case, one person had lost his life; and in FIR only complainant had been shown to have sustained firearm

7. For the reasons mentioned above and while relying on the aforesaid judgments, the case of petitioner being of cross-versions is open to further inquiry into his guilt and resultantly the instant bail petition is allowed and the accused/petitioner is admitted to bail in the instant case subject to furnishing bail bonds of Rs.500,000/- (five lacs) with two local, reliable and men of means sureties each in the like amount, to the satisfaction of the Illaqa Judicial Magistrate/MOD, concerned.

8. These are the detailed reasons of the short order of the even date.

Announced.
13.09.2023.
Imranullah PS

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20 SEP 2023
John A. Graham

[Signature] 20/9/2023