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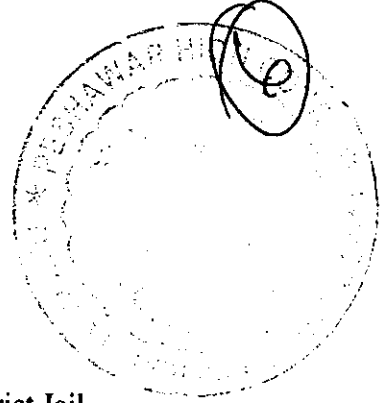
BEFORE PESHAWAR HIGH COURT, BENCH AT  
MINGORA/DAR-UL-QAZA SWAT

Cr. Misc (B.A) No. 315 -M of 2017

Umar Zeb son of Zalandar Khan

Resident of Tormang, Tehsil Khal,

District Dir Lower, presently confined at District Jail  
Timergara, Dir Lower.



..... Accused / Petitioner

VERSUS

1) The State

2) Mst. Bacha Anwar widow of Zalandar Khan

Resident of Tormang, Tehsil Khal, District Dir Lower.

..... Complainant / Respondents

FIR No. 392 dated 06-04-2017

Charge under sections: 302, 200, 201 PPC

Police station Khal, District Dir Lower

APPLICATION UNDER SECTION 497 Cr. P.C

FOR THE RELEASE OF THE ACCUSED /

PETITIONER ON BAIL TILL THE FINAL

DISPOSAL OF THE CASE.

FILED TODAY  
05 JUL 2017  
Additional Registrar

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.M B.A. No. 315-M/2017.**

**JUDGMENT**

Date of hearing: **09.08.2017**

**Petitioner:- ( Umar Zeb) by Syed Abdul Haq,  
Advocate.**

**Respondents:- (the State & 1 another) by Mr.  
Rafiq Ahmad, Astt: Advocate General and M/S  
Rashid Ali Khan and Aziz Ahmad Hashmi,  
Advocates.**

**MOHAMMAD BRAHIM KHAN, J.-** Accused-

Petitioner Umar Zeb looking for his post arrest  
bail in case FIR No. 392 dated 06.04.2017  
charged under sections 302, 200,201 PPC  
registered at Police Station Khal District Dir  
Lower.

2. Earlier, **B.A. No. 88/TV of 2017**  
**titled as "Umar Zeb vs the State etc"** was  
disposed of in terms of its dismissal by the  
Court of learned Additional Sessions Judge/  
Izafi Zila Qazi Chakdara Dir Lower Camp  
Court at Timergara announced on 22.06.2017.

**ATTESTED**

Nawab

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

3. There is a similar relief for the grant of bail in Cr.M B.A. No. 315-M of 2017 preferred by Umar Zeb accused/Petitioner, after hearing learned counsel for the Petitioner, learned counsel for brother of the deceased Bahader Zeb and learned A.A.G for the State, record with their valuable assistance gone through.

4. The Petitioner being complainant was present in his house with the corpus of his brother Mahmood Zeb lying on the cot, reported in the manner that on the doomful day his deceased brother Mahmood Zeb was awoken by his mother to offer *fajr* prayer in the mosque. The deceased went out for offering prayer in the mosque. The then complainant now accused/Petitioner was busy in ablution, when in the meanwhile, at the relevant time on 04.45 hours he heard fire shots and when the complainant went outside, he found his brother lying dead in the thoroughfare near the house of Ibrahim. But at that time there was no clue as to who has killed his brother, therefore, no one

was charged even on account of suspicion. The occurrence was unseen and un-witnessed. Later Mst. Badshah Anwar mother of the deceased recorded her statement before the learned Judicial Magistrate under section 164 Cr.P.C and thereby named the complainant/Petitioner to have killed his son. Application for recording statement of mother of the deceased was moved on 15.04.2017 and the said statement was recorded on even date. Besides there is statement of another PW brother of the deceased and complainant inter se by the name of Bahader Zeb recorded on 03.05.2017 under narration of certain facts leading to involvement of the Petitioner for the murder of his brother Mahmood Zeb.

5. In the case in hand, there is no one named as to who has caused the murder of deceased Mahmood Zeb, but upon implication of the accused/Petitioner Umar Zeb by his own mother when got arrested, he has recorded his confessional statement before the Court of learned Judicial Magistrate-II Timergara Dir

ATTESTED  
Examiner  
Peshawar High Court Bench  
Mingora District Court

Lower on 19.04.2017. This confessional statement coupled with the recovery of crime weapon on his pointation lead to an inference that the Petitioner is cunning person by nature who can be charged for causing disappearance of evidence to screen himself from legal punishment, thereby prima facie he is himself responsible for the murder of his own brother Mahmood Zeb.

6. On the ground of compromise if at all his mother resiled from her previous statement recorded under section 164 Cr.P.C and now does not charge the accused/Petitioner still another brother of the deceased namely Bahader Zeb is strongly opposing the grant of bail in his favour. In this behalf the dictum reported as PLJ 2000 Cr.C. (Lahore) 890 "Uz-Zaman, J. Mst. Zubaida Khanum vs Muhammad Irshad Hussain and 2 others" can safely be referred, where all the Legal Heirs have not forgiven the Petitioner, thus the benefit of partial compromise cannot be extended at bail stage. Where there is a plain confessional

ATTESTED

Enrolled  
Peshawar Bench  
Muzaffar

Nawab

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statement of the Petitioner, in the given circumstances who has tried to screen off himself from committing the murder of his brother when ample evidence is available in the shape of confession and recovery of weapon of offence. The case judgment cited as "Mst. Zaheera Bibi vs the State and another" 2012 MLD 480 (Peshawar) may be referred to. Besides in view of the judgment reported as 2014YLR 1771 (Supreme Court (AJ&K)) "Ameer Qabail vs State of AJ&K", the Petitioner cannot be extended the concession of bail because of his own conduct even if tentatively assessed at bail stage.

7. In view of this report screening of involvement of the accused/Petitioner, recording of his confessional statement and recovery of weapon of offence on his pointation, he does not deserve to be enlarged on bail. Hence, this petition stands dismissed.

Announced  
Dt: 09.08.2017

8 <sup>(h)</sup>  
JUDGE

Certified to be true copy

Office  
17/08/2017  
w/R

Nawab

Peshawar

Muzaffar Qazi

17/08/18