

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

**Cr.M.B.A. No. 351-M/2017.**

**JUDGMENT**

Date of hearing: **21.09.2017.**

**Petitioner:- (Nakaf alias Naqab Khan) by Sajjad Ahmad Jan, Advocate.**

**Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Asstt. Advocate General and Mr. Hazrat Rehman, Advocate.**

**MOHAMMAD IBRAHIM KHAN, J:-** For reasons to be recorded later on in the detailed judgment, this application for bail is allowed and accused/petitioner Nakaf alias Naqab Khan involved in case FIR No. 181 dated 09.06.2017, under sections 324, 337 A (i), 337 F (vi), 337 E, 34 PPC registered at Police Station Gandigar District Dir Upper is directed to be released on bail provided he furnishes bail bonds in the sum of Rs.200,000/- (Rupees two Lac) with two sureties each in the like amount to the satisfaction of learned trial Court, who shall ensure that the sureties are local, reliable and men of means.

**Announced.**  
**Dt: 21.09.2017.**

  
**MOHAMMD IBRAHIM KHAN**  
**JUDGE**

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**Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Asstt: Advocate General and Mr. Hazrat Rehman, Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** On many folded reasons, the learned Additional Sessions Judge-1/Izafi Zila Qazi Dir Upper while disposing of B.A. No. 134/IV of the year 2017 titled as "**Nakaf Khan vs the State & 1 another**" observed that an accused being charged in the FIR with certain specific role being given to him of firing upon the complainant. The medical report is in consonance with the version of prosecution, there are reasonable grounds to believe that the offence with which the accused has been charged fallen within the restrictive clause of section 497 (1) Cr.P.C. The occurrence being taken place in broad day light.

**SCANNED**

There is no misidentification and there are reasons to believe that the witnesses may be truthful and supportive of the complainant, then such an accused/Petitioner is not entitled to the concession of bail. These are the extracts of the order of learned trial Court dated 25.07.2017.

2. Here the Petitioner seeks post arrest bail in case FIR No. 181 dated 09.06.2017 being charged under sections 324, 337 A (i), 337 F (vi), 337 E, 34 PPC registered at Police Station Gandigar District Dir Upper.

3. Under the observation made in the order dated 12.9.2017 rendered by this Court, the Investigating Officer/Station House Officer of Police Station Gandigar was directed to levy proper section of law in respect of the hurt being caused to the injured/complainant. After doing the needful by the concerned Station House Officer, the learned counsel for the Petitioner moved Cr.M for addition of the said levied section of law in the memo of bail

petition, which were accordingly inserted in the record.

4. Asif Ali who was lying alongwith other injured at Tarpatar hospital reported that on the day falling on Friday he came out after performance of *Juma* prayers. He witnessed Naqab Khan, Hayat Khan, Sardar Alam sons of Saidool and Said Ali son of Lalai, who had previously altercated with the complainant over grazing of goat. Naqab Khan the present Petitioner alongwith Hayat Khan drew their pistols and started firing at the complainant. These fire shots hit him on his knee, while the pelted stone of Said Ali hit him on his head. The other injured Bakht Sardar was hit by pelted stone of Alam. The occurrence is witnessed by Janat Ali, Wahidullah and others. Motive behind the occurrence is dispute over forest.

5. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned Astt: Advocate

General for the State, record with their assistance gone through.

6. Learned counsel for the Petitioner referred to 2015 YLR 2595 (Sindh) " Abdul Razzaq vs 1st Additional Sessions Judge and another", 2001 YLR 2056 (Peshawar) " Said Rehman and another vs the State and 3 others", 2003 P Cr.LJ 1149 (Peshawar) " Sher Khan and 2 others vs the State and another", 1995 P Cr.LJ 862 (Peshawar) " Abdul Ghaffar vs the State and another", PLD 1992 Peshawar 111 " Karam Ellahi vs the State", 2013 P Cr. LJ 1754 (Lahore) " Ghulam Mustafa vs the State and another", 2004 P Cr.LJ 1646 (Peshawar) " Raeed Shah vs Gulan Shah and another", 1999 P Cr. LJ 230 (Peshawar) " Aurangzeb vs the State and another", 2012 P Cr.LJ 1502 (Lahore) " Muhammad Nadeem and another vs the State", 1998 MLD 1184 (Peshawar) " Ikramullah vs Sami Ullah and another", 1998 SCMR 1528 " Haji Maadin and another vs the State", 1996 SCMR 1845 " Shoaib Mehmood

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Butt vs Iftikhar-ul-Haq and 3 others". In the light of these dictums of the Hon'ble superior Courts prayed for the grant of bail. Inversely, learned counsel for the complainant assisted by learned A.A.G. placed reliance on 2008 SCMR 678 " Muhammad Rafique vs the State", 2009 YLR 1818 (Peshawar) " Fazal-ur-Rehman vs Khalid and 2 others", PLD 1993 Peshawar 151 " Muhammad Ashraf vs Duarriyaman and another", 2004 P Cr.L J 968 (Peshawar) " Muhammad Shafiq vs Muhammad Mir Khan", an reported judgment of this Court rendered in Cr.M B.A. No. 131-M of 2017 " Muhsin Islam & Salih Islam vs the State", 2005 SCMR 1402 " Arif Din vs Amal Khan and another", 2013 SCMR " Liaqat Ali vs the State and others", 2012 YLR 1761 (Peshawar) " Dr. Anwar Farid vs the State and another", 2017 MLD 444 (Peshawar) " Yasir vs the State and another" and 2008 SCMR 678 " Muhammad Rafique vs the State" and thereby prayed for utter dismissal of the bail petition.

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7. Although, the Petitioner is named in the First Information Report, who has been given the role to have fired upon the complainant Asif Ali alongwith fire shots being attributed to Hayat Khan co-accused, but these fire shots were fired simultaneously, it needs to examine the complainant as to when the fire shots were fired at the same time by Naqab Khan and Hayat Khan, how the complainant has witnessed the fire shots of the accused/Petitioner having hit him on his right knee. According to the medical report the injuries being sustained by the complainant is of the type of *ghayr-jaifah munaqqilah* and *Shajjah-i-khafifah*, which entail punishment of Daman and may also be punished with imprisonment of either description for a term which may extend to two & seven years respectively as ta'zir.

8. —————

8. It is also yet to establish if the accused/Petitioner had intention to kill the complainant he would have rightly fired straight on the complainant. The co-accused Hayat

Khan who has already been enlarged on bail has also fired upon the complainant, whose fire shots were stated to be proved ineffective. It is also a matter to think over as to why accused/Petitioner Naqab Khan was selected as choice for effective firing upon the person of complainant.

9. Above are the dictums of the Hon'ble superior Courts as referred by learned counsel for the Petitioner, the judgment reported in 2008 SCMR 1621 tilted as "Umar Hayat vs the State and others" speaks off:-

*"Accused had allegedly fired 4/5 shots from his pistol on complainant, out of them one fire hit on his left knee. Said injury fell within the ambit of S. 337 F (v) PPC. Accused had rightly been granted bail Trial Court and High Court while cancelling the same had failed to observe whether bail granting order was arbitrary, capricious or fanciful. Petition for leave to appeal was converted into appeal and allowed and accused was granting bail in circumstances."*

10. The acquittal or conviction is always based on the evidence to be adduced by

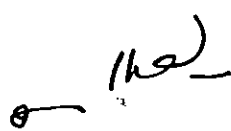


the prosecution, this absolute right still rest with the learned trial Court yet when there are reasons to believe that the punishment may not fall within the prohibitory clause of section 497 Cr.P.C then such an accused is entitled to the concession of bail.

11. In view of the above, the Petitioner is enlarged on bail subject to his furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

12. These are the reasons of my short order of even date.

Announced  
Dt: 21.9.2017.

  
Mohammad Ibrahim Khan  
Judge

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28/9/2017  
W/R