

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**

*Cr.Misc. (BA) No. 197-P/2017*

***JUDGMENT***

Date of hearing.....17.3.2017.....

Petitioner (Akbar Said) by Mr. Muhammad Nisar, Advocate

Respondent (The State) by Mr. Rab Nawaz Khan, AAG

Syed Rifaqat Shah, Advocate for the complainant.

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**QAISER RASHID KHAN, J.-** The accused/petitioner seeks bail in case FIR No. 231 dated 20.7.2014 registered under Sections 302/324/148/149 PPC at Police Station Mandani, with the allegations that he alongwith his co-accused had fired at the complainant party with which Fazle Maula son of the complainant Moambar was hit and died on the spot while the complainant also received firearm injuries.

Arguments heard and the available record perused.

2. As per the FIR, it was the complainant Moambar who in injured condition reported about the incident in the Civil Hospital Jamalabad as to how while present at his house with his son Fazle Maula, he rushed outside on the report of fire shots and there he saw the accused/petitioner alongwith his co-accused firing at his son Zakirullah whereafter they

also fired at the complainant and Fazli Maula with which the latter was hit and died on the spot while the complainant also received firearm injuries.

3. All that the learned counsel for the petitioner vehemently argued was that a general role of firing has been assigned by the complainant to seven accused and that four co-accused namely Awal Said, Parvez, Noor Said and Tajy were tried by the learned Additional Sessions Judge, Charsadda at Tangi and at the conclusion of the trial were acquitted and the role of the petitioner is in no way distinguishable from that of the acquitted accused, therefore, he is entitled to be enlarged on bail.

4. No doubt, a general role of firing has been attributed by the complainant to the accused/petitioner as well as to four acquitted co-accused and of course to the two absconding co-accused namely Khan and Ayaz. However, in a situation where the complainant himself received firearm injuries, where he made the report with due promptitude i.e. within the 45 minutes after the occurrence, where the FSL report shows that 10 empties of 7.62 bore, and 10 crimes empties of 30 bore retrieved from the spot, were fired from different weapons, showing the involvement of several persons

in the commission of the offence, where the accused/petitioner preferred to abscond and surfaced only after the acquittal of his co-accused, then he cannot press into service such order of acquittal to be a ground for grant of bail to him as the co-accused earned their acquittal after facing the rigors of a protracted trial. The available circumstances prima facie connect the accused/petitioner with the commission of the offence which squarely attracts the prohibitory limb of section 497 Cr.P.C. Thus I hold the accused/petitioner disentitled to the concession of bail. Resultantly, this bail petition is dismissed.

Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, shall in no way prejudice the proceedings before the learned trial court where the case be decided on its own merits after recording evidence.

J U D G E

Announced  
17.3.2017