

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Bail Petition No.1402-P/2021

ORDER

Date of hearing : 28th May, 2021.

Petitioner (Shad Nabi) : By M/S Astaghfirullah and Shahab Khattak, Advocates.

Respondents
Complainant : In person.

State : By Mr. Niaz Muhammad,
AAG.

QAISER RASHID KHAN, CJ:- Accused-petitioner

seeks his release on bail in case FIR No.198, dated 15.07.2016, under Sections 302/34 PPC of Police Station Jarma, District Kohat, with the allegations that he along with his co-accused had fired at Lal Muhammad, brother of the complainant with which he was hit and died on the spot.

2. All that the learned counsel for the accused-petitioner contends is that the latter has been falsely roped in the instant case as no motive has been advanced against him in the FIR; that the medical evidence does not support the prosecution version; that the site plan rules out the presence of

the accused-petitioner on the spot; that the co-accused Zahirullah with a similar role of firing has been acquitted by the learned trial court and such circumstances, take his case to one of further inquiry entitling him to the concession of bail.

3. The complainant present in court expressed his inability to engage a counsel. As such, the learned AAG advanced his arguments resisting the bail petition. He contended that the accused-petitioner along with his co-accused have been directly nominated by the complainant for the commission of the offence and as such, he is not entitled to the concession of bail.

4. Arguments heard and the available record perused.

5. As per the FIR ibid, it was the complainant Naimat Khan, who accompanied by the dead body of his brother namely Lal Muhammad reported at the police station about the incident as to how while he along with his deceased brother and uncle Muslim Khan were proceeding from their house to Bazar with his brother Lal Muhammad ahead of them, when they came across the accused-petitioner along with his

co-accused namely Umar Nawaz and Zahirullah duly armed with their respective firearms, who suddenly started firing at Lal Muhammad with their respective firearms with which he was hit and died on the spot.

6. From the spot 30 empties of 7.62 bore were retrieved which as per the FSL report have been fired from different weapons. Given the fact that the accused-petitioner along with his co-accused have been directly nominated by the complainant for firing at his deceased brother with their respective firearms with which he sustained multiple firearm injuries and died on the spot, coupled with the FSL report pointing towards the involvement of more than one accused in the commission of the offence, then in such event, the accused-petitioner is prima facie connected with the commission of the offence attracting the prohibitory limb of section 497 Cr.P.C.

7. The argument of the learned counsel for the accused-petitioner that the co-accused Zahirullah with a similar role of firing at the deceased has been acquitted by the learned trial court carries little weight. While co-accused Zahirullah faced trial, the accused-petitioner preferred to abscond and

surrendered barely a month after the acquittal of his co-accused. Moreover, the other co-accused Umar Nawaz is still fugitive from law.

8. Thus taking a tentative assessment of the material available on record, the accused-petitioner is prima facie connected with the commission of the offence attracting the prohibitory limb of section 497 Cr.P.C. Hence, I hold him disentitled to the concession of bail.

9. Resultantly, this bail petition stands dismissed.

Announced.
Dated: 28.05.2021.



CHIEF JUSTICE