

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr. Misc:/B.A No.323 -B of 2015

JUDGMENT

Date of hearing _____ 04.01.2016 _____.

Appellant-Petitioner: **Nasir Khan By Mr. M. Sadeeq Khan, Advocate.**

Respondent: **By Mr. Shah Hussain**
Khan, Advocate, State
By Qudrat Ullah Khan,
A.A.G.

MUHAMMAD YOUNIS THAHEEM, J.-

Petitioner Nasir Khan involved in case F.I.R No. 453 dated 19.08.2011, under sections 324/34, of Police Station Saddar Bannu was refused bail by the learned Additional Sessions Judge-I, Bannu, vide its order dated 15.12.2015. He has moved this further application through counsel for his release on bail.

2. The allegations against the accused/ petitioner as per F.I.R referred to above are that on 19.08.2011, he alongwith Qaiser Khan (acquitted co-accused) duly armed with pistols and in

furtherance of their common intention attempted at the life of complainant Qasim Khan and his father Syed Rehman, by firing at them, as a result, complainant was hit while his father luckily remained unscathed. Complainant was shifted to civil hospital Bannu in injured condition, where he lodged report. Motive behind the occurrence is stated to be exchange of hot words inter-se the complainant and accused few hours prior to the incident.

3. Learned counsel for the petitioner argued that the occurrence has not taken place as narrated by the complainant. He further argued that ocular account, site plan and other corroborative evidence also contradict each other. He went on to say that the accused/ petitioner deserves to be released on bail on the basis of further inquiry and abscondence is not the hurdle in the way of release of petitioner on bail. He lastly argued that the co-accused Qaiser Khan having identical role has been acquitted, was released on bail. hence, on the same analogy, the present accused/ petitioner deserves to be released on bail.

4. Learned Addl: A.G for the state, assisted by learned counsel for complainant vehemently opposed the arguments of learned counsel for petitioner by contending that it is day light occurrence, parties are of the same village very known to each other, hence, there is no chance of misidentification. They further added that the report has been lodged promptly for attempting at the life of complainant and his father. They further averred that recovery memo, site plan, post mortem report and other corroborative pieces of evidence prima facie connect the accused/ petitioner with the commission of offence. They lastly argued that accused/ petitioner after commission of offence remained absconder deliberately for a long period of about four years and waiting for acquittal of co-accused Qaiser Khan, hence, not entitled for the concession of bail.

5. I have heard arguments of learned counsel for parties, Addl: A.G for state and perused the record with their valuable assistance.

6. It appears from the F.I.R that in this case the occurrence took place on 19.08.2011 at about 18.00 hours. Qasim Khan is the complainant/

injured, while Said Rehman is eye-witness of the present case and the complainant has charged the accused/ petitioner alongwith acquitted co-accused Qaiser Khan for commission of offences described in the FIR with added offence under section 334 PPC.

7. Qaiser Khan co-accused has been acquitted by the learned trial court. Admittedly and as is evident from the record the occurrence took place on 19.08.2011 and police conducted house search of accused on the same date, while accused/ petitioner went abroad on 02.11.2011 after more than two months of registration of case and house search, thus remained absconder willfully for a considerable long period of four years and after acquittal of his co-accused, he surrendered himself. If, in the attending circumstances of the case, he is granted bail merely due to acquittal of co-accused, then most of the accused would remain fugitive from law during disposal of the case of their co-accused. Wisdom is derived from a case law **“Atlas Khan Vs Mazamullah Khan and another” (1989 PCr. LJ 2044 Peshawar)**, where it is held that the accused who absconded after the occurrence for

noticeable period, would not be invariably entitled to bail merely because his co-accused had been acquitted in the case.

8. Moreover, the evidence recorded in absence of accused/ petitioner cannot be taken into consideration neither at bail stage nor during trial, as the fate of accused/ petitioner would be decided on the evidence recorded in his presence. In this respect case of **“Sardar Vs State” (PLD 1979 Peshawar 16)**

can favorably be reproduced as below:-

“Accused/ petitioner remaining outlaw after occurrence for about eight years and his trial to be held independently of previous trial resulting in acquittal of his co-accused. Contention that other accused in case having been acquitted and evidence being same in both cases, petitioner exonerated from charge of murder. Held. Not correct. Acceptance of contention amounts to examining of witnesses in petitioner’s case as a matter of mere formality or there being no need to examine such witnesses for reason of such evidence having already been taken into consideration in previous case and

such course not permissible in law.

Bail application rejected.”

9. On merits, tentative assessment would show that accused/ petitioner is directly charged in first information report by the complainant; injury sheet of the complainant, which injury resulted into amputation of his right foot above his ankle; recoveries of two empties from the side of accused/ petitioner; motive and ocular account of eye witness Said Rehman support the complainant version for commission of offence by the accused/ petitioner, which falls within the prohibitory clause of section 497 Cr.PC.

10. Moreover, investigation in the case is complete and trial is ready for commencement in the near future, but in the meanwhile, case file was requisitioned by this Court in connection with the instant petition. Much has been argued before me from either side, but discussion on all these points would amount to deeper appreciation of evidence which has always been deprecated by this court as well as by the Supreme Court of Pakistan, at bail stage.

11. On the face of it, reasonable grounds exist for believing that the accused/petitioner has committed an offence, resultantly, the petition for the grant of bail stands dismissed. However, learned trial court is directed to conclude the trial within a period of four months, if not earlier than that.

Announced.
04.01.2016

J U D G E