

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.782-A/2018

JUDGMENT

Date of hearing.....22-10-2018.....

Petitioner (s)... (Muhammad Aslam) by Mr. Awais Abbasi,
Advocate.....

Respondent (s)..... (The State etc) by Mr. Wajahat Ali
Shah, Advocate State counsel
alongwith Imran Khan son of
deceased.....

SYED MUHAMMAD ATTIQUE SHAH, J.-

Accused-petitioner, Muhammad Aslam, after having been refused bail by the learned lower Court in case FIR No.179 dated 20.09.2018 under sections 322/427 PPC, Police Station Komila, has approached to this Court for the same relief by filing the instant bail petition.

2. The allegation against the accused-petitioner, as reveals from the report of Sultan Shah, complainant is that the accused/petitioner caused '*Qatl-bis-Sabab*' of deceased Sher Ali on 20.09.2018 at 02.00 at night.

3. Arguments of the learned counsel for the parties heard and record perused with their valuable assistance.

4. Perusal of record would reveal that no doubt one Sher Ali, driver of Truck No.1734/GLTE lost his life in the incident, however, in view of peculiar facts and circumstances of the case, especially the statement of Muhammad Niaz, second driver of truck, coupled with affidavit of one of the legal heir of deceased Sher Ali submitted before the Court showing his no objection regarding release of accused/petitioner on bail, the role attributed to him requires further probe by the learned trial Court regarding his culpability in the commission of '*Qatl-bis-Sabab*' or otherwise of the deceased, after recording evidence of the prosecution. Moreover, punishment provided under section 322 PPC is payment of *Diyat only*. It has been observed by this Court in *Mir Aman's case* (2010 YLR 1930) that:-

"The law on the point is silent as to whether the punishment of 'Diyat' would fall under the prohibitory clause of section 497, Cr.P.C. or not. At this stage of the case, without entering into the deep merits of the case, one cannot be kept in jail for a matter which still requires further probe as to whether it was an offence of 'Qatl-i-khata'/'

‘Qatl-bis-sabab’ or an intentional act of the accused. In this view of the matter, this Court is of the view that accused charged in such like situation would be entitled to the concession of bail under section 497 (2) Cr.P.C on the point of further inquiry.”

Therefore, at the moment, this Court considers that, prima facie a case of ‘*further inquiry*’ into the guilt of the accused/petitioner is made out, as contemplated in subsection 2 of section 497 Cr.P.C.

5. The observations rendered hereinabove being tentative in nature, would not affect the mind of the trial Court in any manner whatsoever, during trial of the case.

6. Consequently, this bail application is accepted, accused-petitioner, Muhammad Aslam is admitted to 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 the *Illaqal*/Duty Judicial Magistrate, Kohistan.

Dt.22-10-2018.


JUDGE

M.Saleem/*