

IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr. Misc: BA No.231-B of 2018.

Safaidullah Shah and other
Vs
The State etc.

JUDGEMENT/ORDER.

W Date of hearing 07.09.2018

Appellant-Petitioner By Syed Fakhr-ud-

Din Shah Adv.

Respondent State By Shahid Hameed

Adv. A.B. Complaint By Jiftikhor Durrani Adv.

SHAKEEL AHMAD, J.- The petitioners namely

Safaidullah Shah and Imran Ali Shah through the

instant petition seek their post arrest bail in crime

report No.369 dated 30/11/2010, registered under

sections 302/324/34 PPC at Police Station

Ghoriwala, district Bannu.

2. The prosecution story as given in the crime

report, is that on 30.11.2010, the complainant Andaz

Ali Khan at about 2150 hours brought the dead body

of his brother Barkat Khan to the Civil Hospital Bannu and lodged report to the effect that on same night he was present in his house and his brother Barkat Khan informed him that accused/petitioners Safaidullah and Imran had snatched articles from him, so he wanted to make a complaint to their parents; that complainant, deceased and one Dil Robaz Khan proceeded towards the house of accused/petitioners, however, when they reached near the houses of one Rizwan, the accused/petitioners emerged; that accused/petitioner Safaidullah made firing at Barkat Ali (brother of complainant) and accused/petitioner Imran made firing at complainant, resultantly they both were hit and got injured. The accused/petitioners decamped from the spot after the occurrence. Both the injured were taken to the hospital, but Barkat Ali succumbed to the injuries on the way to the hospital. Hence, the accused/petitioners were booked in case FIR (ibid).

3. After arrest, the petitioners applied for post arrest, which was declined by the learned Additional Sessions Judge-IV Bannu, vide order dated 02-07-2018. Hence, this petition.

4. It has been contended by the learned counsel for the petitioners that the petitioners are innocent and have falsely been implicated merely on the basis of suspicion; that the alleged occurrence took place in the darkness of night, and the complainant has not disclosed the source of light in which the petitioners were identified, therefore, identification of accused was not possible; that the PM report of the deceased discloses charring marks on his body which is in conflict with the distance shown in the site plan; that mere abscondence of the petitioners would not disentitle them to the concession of bail; that the prosecution case requires further probe into the guilt of the petitioners, therefore, they deserve the concession of bail.

5. Conversely, the learned counsel appearing on behalf of the complainant and the learned A.A.G representing the State vehemently opposed the contention of the learned counsel for the petitioners and argued that the petitioners have specifically been charged for committing murder of brother of the complainant and also causing injuries to the complainant; that the parties are residents of one and the same area and distance between the accused and complainant party, as shown in the site plan, are very close to each other, therefore, there was no chance of mis-identification; that after commission of offence the petitioners remained at large for a noticeable period which lends further support to the case of prosecution and that after arrest of the accused, Challan has been submitted and the trial has already been commenced, so at this stage, petitioners are not entitled to the concession of Bail; that the medicolegal report, site plan

and version of the complainant, if placed in a juxtaposition, are consistent, inter alia; that the offence with which the petitioner is charged, falls within the prohibitory clause of Section 497 Cr.P.C, therefore, they do not deserve the concession of bail.

6. I have heard arguments of learned counsel for the parties and perused the record with their valuable assistance.

7. Perusal of the record reveals that the FIR was lodged with promptitude wherein the petitioners have specifically been nominated for committing murder of brother of the complainant and effectively firing at the complainant. Admittedly the parties are co villagers and the distance between the accused and complainant party are short, therefore, there was no chance of mis identification, though the occurrence has taken place at night time.

After commission of offence, they remained at large

for more than seven years and were declared proclaimed offenders.

8. The crime in question having taken place on 30-11-2010, the petitioners were arrested on 27.09.2017, they remained absconders for more than 7 years and were declared as proclaimed offenders. It is settled law that fugitive from law loses some of the normal rights granted by the procedural and substantive law and noticeable abscondence disentitles the absconder to the concession of bail, notwithstanding the merits of the case. In this behalf reliance can be placed on the case reported as "*Muhamad Sadiq..Vs..Sadiq and others (PLD 1985 SC 182)*". In this case bail allowed by Peshawar High Court Abbott Abad Bench was cancelled by the august Supreme Court of Pakistan, wherein unexplained noticeable abscondence of six months of the accused was found, same view was expressed by their Lordship

in the cases titled "Awal Gul ..Vs..Zawar Khan & others (PLD 1985 SC 402) & Ibrahim..Vs..Hayat Gul & others (1985 SCMR 382) and Raza Fazal-ur-Rehman..Vs..Muhammad Afzal & other (2010 SCMR 179).

9. In this case certain points have been agitated by the learned counsel for the petitioner, i.e presence of charring marks on the body of the deceased, despite the fact that distance between accused and deceased was shown as four paces, which essentially touches the merits of the case. It is not denied that deeper appreciation or evaluation of material at the stage of bail is not permissible for the grant or refusal of bail and only tentative assessment is to be made, In this respect reliance is placed on the case reported as "Mumtaz Vs..The State (2012 SCMR 556) and Abdullah Hayee & two others..The State (1996 SCMR 556) .

In this behalf reference may also be made to the case reported as *Raza Khan ..Vs.. The State through Advocate General Peshawar & another (2013 MLD 810)*.

10. It is pertinent to mention here that after completion of investigation challan has been submitted and the trial has been commenced. In such situation, it has all long been settled principle of law, set by august Supreme Court of Pakistan, when the trial is likely to commence or has begun, bail application should not be decided on merits and the matter be left to the trial Court, lest it may prejudice case of either side. In this respect, reliance can well be placed on the cases reported as *Muhammad Sadiq and others Versus The State (1980 SCMR 203), Muhammad Ismail..VS.. Muhammad Rafique & other (PLD 1989 SC 585), Mian Dad Vs. The State and another (1992 SCMR 1418), Said Akbar and another Vs Gul Akhtar & another*

(1992 SCMR 931) and Shahid Farooq Vs..The
State and others (2011 SCMR 1619).

11. In view of specific charge supported by the eye-witnesses, medical evidence and unexplained noticeable abscondence sufficiently provide reasonable grounds to believe that the petitioners are guilty of an offence charged with, which falls within the prohibitory Clause of Section 497 Cr.P.C.

12. For what has been discussed above, there is no merits in this petition, which is hereby dismissed.

It is clarified that any observations made in this order is tentative in nature, confined only to the extent of bail matter which would not influence the mind of the trial Court in any manner who shall decide the case by applying its own independent judicial mind after recording evidence.

13. The learned trial Court is directed to conclude the trial expeditiously but not later than six months. The office is directed to send the requisitioned record forthwith.

Announced.
07.09.2018


J U D G E.

