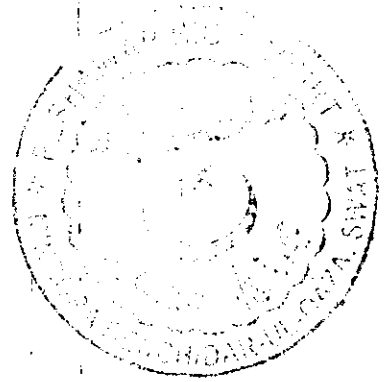


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BEFORE PESHAWAR HIGH COURT, BENCH AT
MINGORA/ DAR-UL-QAZA SWAT

Cr. Misc (B.A) No. 425-M of 2017



- 1) Salim
- 2) Suliman sons of Muhammad Gul
- 3) Munir son of Suliman
- 4) Niaz son of Salim

Residents of Mam Dherai, Tehsil Kabal, District Swat presently
confined at District Jail Daggar, District Buner.

..... Accused / Petitioners

VERSUS

- 1) The State
- 2) Ikram Ali son of Usman Ali resident of Mam Dherai,
Tehsil Kabal, District Swat.

..... Complainant / Respondents

ATTESTED
Examiner
Peshawar High Court Bench
Mingora/Dar-ul-Qaza, Swat.

FIR No. 342 dated 18-07-2017

Charge under sections: 302 / 324 / 147 / 148 / 149

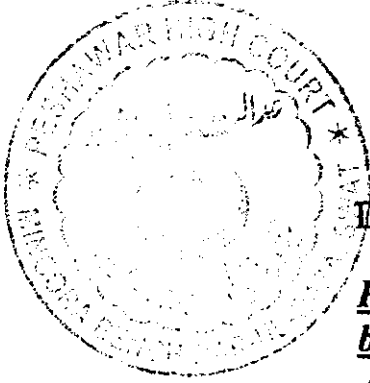
337 F (ii) / 337 D PPC / 15 AA

Police station Kanju, District Swat

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M B.A. No. 425-M/2017.

CONSOLIDATED
JUDGMENT




Date of hearing: **19.10.2017**

Petitioners:- (Salim, Suliman, Munir and Niaz)
by M/S Saeed Ahmad Nasir and Razallah,
Advocates.

Respondents:- (the State & 1 another) by Mr.
Rafiq Ahmad, Asstt: Advocate General and
Sajjad Anwar, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- By Cr.M

B.A. No. 425-M of 2017 preferred by Salim, Suliman, Munir and Niaz all family members are seeking jointly their post arrest bail in case FIR No. 342 dated 18.7.2017 charged under sections 302, 324, 147, 148, 149, 337 F (ii), 337 D PPC and 15 A.A registered at Police Station Kanju District Swat.

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2. There is also connected Cr.M B.C.A. No. 107-M of 2017 separately filed by Ikram Ali the complainant of this case against Shah Sawar and Bilal accused/Respondents No.

1 & 2 who have been granted the concession of bail by the Court of learned Additional Sessions Judge/Izafi Zila Qazi Kabal Swat vide the impugned order dated 15.09.2017. This petition is aimed to set aside the same order and to put these accused/Respondents in judicial lock up till final disposal of this case. Since both these petitions arise out of one and the same FIR, therefore, are taken up together by this Court for commutual findings.

3. The '*Murasila*' based on First Information Report would reveal that the complainant-party consisting of injured Usman Ali, Burhan and the injured complainant himself being present in the hospital for their treatment in respect of the injuries being caused to them alongwith corpus of Nasr-ud-Din reported that on the doomful day they were present in their "Tang", in the meanwhile Saleem, Suliman sons of Muhammad Gul, Munir, Shah Sawar sons of Suliman, Niaz son of Salim and Bilal son of Ismail came there and amongst them the accused Salim asked father of the complainant

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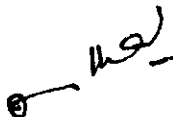
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as to why they had come to their "Tang", this lead to an altercation. Accused Saleem gave Churi blows to Nasruddin, Usman Ali was attacked by Suliman through Churri blows, Burhan was inflicted Churri blows by Niaz and Munir had attacked upon the complainant through Churri blows, whereas the accused Shah Sawar and Bilal have also inflicted Churri blows to all of them (complainant-party). All the Churri blows were proved effective as the complainant-party received injuries on different parts of their bodies. The Churri blows of accused Salim has caused the death of Nasruddin deceased, so much so, that accused Salim has resorted to firing upon the complainant-party but his fire shots proved ineffective. The occurrence is stated to have been witnessed by many persons and the motive behind the occurrence is a dispute over the "Tang".

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4. While hearing learned counsel for the Petitioners, learned counsel for the complainant and learned Astt: Advocate

General for the State, record with their assistance gone through.

5. Learned counsel for the Petitioners referred to 2013 P Cr. LJ 856 (Lahore) " Mian Khan and another vs the State and another", 2012 P Cr. LJ 1293 (Lahore) " Saeed Ahmad vs the State", 2012 P Cr. LJ 1883 (Peshawar) " Khan Zada vs the State and another", 2009 SCMR 299 " Miho Pitfai vs the State", 1995 P Cr. LJ 412 (Lahore) " Bashir vs the State" and PLJ 2017 Cr.C. (Peshawar) 32 " Jehangir vs the State". In the light of these dictums of the Hon'ble superior Courts prayed for the grant of bail. Inversely, learned counsel for the complainant assisted by learned Astt: Advocate General placed reliance on 1990 SCMR 299 " Ghulam Akbar vs the State", 2012 SCMR 556 " Mumtaz vs the State", 2012 YLR 1761 " Dr. Anwar Farid vs the State and another", 2005 P Cr. LJ 1330 (Peshawar) " Zarif Khan vs the State", 2004 YLR 1153 (Peshawar) " Abdul Qadir vs Alamzeb and another", 2003 P Cr. LJ 1404 (Peshawar) " Zar Gulab and 6 others vs

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Mingora, District Qarni, Swat.

11/9/21

the State and another" and 2008 YLR 2004

(Peshawar) " Sadullah vs the State and

another" and thereby vehemently opposed the grant of bail in favour of these accused/Petitioners .

6. As far as the role of the accused/Petitioner Salim is concerned, who is charged for inflicting Churri blows to the deceased Nasruddin aged about 23/24 years. The version of the complainant is fully supported by the medical evidence as all the injuries upon the person of injured cum deceased were caused with sharp object. There is recovery of crime Churri from his person at his instance and as token of its proof the photograph of the same is also available on the record. This accused/Petitioner Salim has previous history of similar type of inflicting Churri blows upon the person of the then deceased Akbar Khan brother of the complainant Alangir as evident from case FIR No. 437 dated 27.11.1987 charged under sections 302, 34 PPC registered at Orangi

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Town Karachi, photocopy of the said FIR has been furnished by learned counsel for the complainant, which is placed on the record. Besides, the occurrence has taken place in broad day light and there is no chance of mistaken identity as the parties are also known to one and another coupled with the fact that the occurrence occurred in close proximity. Above all, the presence of the accused/Petitioner Salim has also been established at the venue of crime, as just after the occurrence he has been examined by the medical officer for the injuries being caused on his person for which one Niaz Khan son of the present accused/Petitioner Salim reported the matter to the local police vide Naqal Mac No. 59 dated 18.07.2017.

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Hence, at the moment there is no scope of further inquiry to enlarge the accused/Petitioner Salim on bail, hence to his extent this Cr.M B.A. No. 425-M of 2017 stands dismissed.

7. Whereas rest of the Petitioners as per version of the complainant followed by the medical evidence would suggest that the injured

Burhan had sustained injuries at the hands of Niaz, which are of the type of *Badi'ah*. Likely, the Churri blows causing injuries to the injured Usman Ali are of the type of Jurh Jaifah and the injures upon the person of Ikram Ali are opined by the Medical Officer as Ghair Jaifah *Badi'ah*. In all probabilities, these injuries of the injured PWs would at maximum entail punishment which would not fall under the prohibitory clause of section 497 Cr.P.C. Therefore, these accused/Petitioners Suliman, Munir and Niaz are entitled to the concession of bail, hence, they are asked to furnish bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

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Peshawar Bench
Muz 11/11/11 Swat

8-11-11

8. Amongst the accused/Respondents Bilal is a minor while the role of other accused/Respondent Shah Sawar is also distinct and distinguishable from rest of the accused as both of them have been attributed general role

of causing *Churri* blows to all the injured persons even including the deceased but there is no specific injury which can be attributed to each of them. Thus, the impugned bail granting order dated 15.09.2017 in favour of the accused/Respondents passed by the learned Additional Sessions Judge/Izafi Zila Qazi Kabal Swat is absolutely within the ambit of holding to be proper and just order which is neither perverse nor perfunctory, therefore, the connected Cr.M B.C.A. No. 107-M of 2017 titled as "*Ikram Ali vs Shah Sawar & others*" being shorn of merits stand dismissed.

9. These are the reasons of my short order of even date.

10. Before parting with this judgment, it is pertinent to mention here that the observations made above are purely tentative in nature and should in no way prejudice the case of either party during trial.

JUDGE

Announced
Dt: 19.10.2017.