

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT BANNU BENCH
(Judicial Department)

BA No.218-B of 2021

Nasim Ullah Khan
Vs
The State & others

JUDGEMENT

Date of hearing 24.05.2021

Petitioner by:

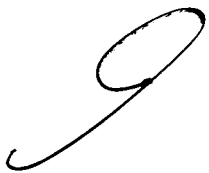
Mr. Farooq Khan Sokari Advocate

Respondents by:

Muhammad Rashid Khan Dirma Khel Advocate

State by:

Mr. Saif-ur-Rehman Khattak Addl: A.G

 **SAHIBZADA ASADULLAH, J---** After having been booked in case F.I.R No.525 dated 16.09.2020 under section 302/324 P.P.C Police Station Mandan, Bannu, the petitioner applied for post arrest bail before the court of learned Additional Sessions Judge-IV, Bannu, which was declined vide order dated 17.04.2021. Feeling aggrieved, the petitioner approached this court through the instant bail petition.

2. Brief facts of the case as per contents of FIR are that on 16.09.2020 at about 12:45 hours, complainant Abdul Qayum Khan brought the dead body of his nephew Zahir Ullah and reported the matter to the local police in DHQ Hospital, Bannu to the effect that on the eventful day he alongwith his nephew Zahir Ullah Khan left the house of his brother

Sadrullah Khan situated at village Shakrullah Beri Khel, that in the meanwhile at about 12:00 hours the accused/petitioner duly armed with Kalashnikov suddenly appeared and started firing at them with murderous intention. Resultantly, his nephew Zahir Ullah Khan got hit and fell down near the main gate of his house, while the complainant luckily escaped unhurt. The accused decamped from the spot after commission of offence and that he could do nothing being empty handed. His nephew Zahir Ullah Khan succumbed to his injuries on the spot. Motive for the offence was stated to be previous blood feud between them, hence, the instant F.I.R.

3. Learned counsel for the petitioner argued that the accused/ petitioner is innocent and falsely been involved in the instant case. He further submitted that the presence of the petitioner at the stated time is not established from the record, rather on the day and at the time of incident, he was present in the court premises, in connection of a superdari application submitted by his brother, for the return of a Kalashnikov. He lastly submitted that the Investigating Officer collected evidence in that respect including affidavit tendered by all concerned.

Contrarily, the learned Addl: Advocate General representing the state, assisted by learned counsel for the complainant submitted that the accused is directly charged for murder of deceased in a promptly lodged report and the collected material leaves no scope for further inquiry and the petitioner does not deserve the requested concession.

4. Heard and record perused.

5. The record leaves no ambiguity to tell that the accused/ petitioner is directly charged for commission of murder of the deceased and the matter was promptly reported to the local police. The Investigating Officer visited the spot, prepared the site plan on the pointation of the complainant, recovered blood stained earth from the place of incident alongwith 05 empties of 7.62 bore and also observed bullet marks on the western wall behind the deceased. The collected material prima facie tilts the balance in favour of the prosecution but on merits. However, it is essential to deal with another aspect of the case, as the petitioner soon after getting his interim bail before arrest, submitted an application for fair investigation and the Investigating Officer visited the

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Court premises, recorded statements of all concerned and collected affidavits in respect of the plea taken. It is pertinent to mention that the Investigating Officer also collected the call data record, which was stressed by the learned counsel to make us believe that the petitioner at the stated time was present in the Court premises. Though the plea of alibi cannot out rightly be rejected but keeping in view the emerging trend regarding collecting evidence in respect of innocence of all concerned, that too, at bail stage has increased the anxiety of the prosecution and this court as well, need is there to see its genuineness and authenticity, but that is possible only when the matter comes before the trial Court. The plea of alibi if taken at the earliest shall not out rightly be rejected, but that varies from case to case and with utmost respect the present case is an exception. The situation has been attended to by the apex Court, in case titled "Naseer Ahmad Vs the State (PLD 1997 SC 347)" it is held that:

"A trend has developed nowadays that eye-witnesses some times; take a somersault and give statements which are different from prosecution case

and some times file affidavits also at the stage of hearing of bail applications of accused persons with intention of creating doubt in the case of prosecution to enable the accused to get bail. The Courts have to be very careful in such cases and see that bail applications are disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the trial Court.”

6 True that the petitioner submitted an application regarding his innocence with request for fair investigation, but equally true that at this stage it is hard to determine the innocence of the petitioner in light of the collected evidence, as appreciating the evidence in that respect on one hand may prejudice the case of either side, while on the other, amounts to deeper appreciation of evidence, which is not warranted at bail stage, as indulging into such practice is to pre-empt the powers of the trial court. This court is conscious of the fact that bail applications cannot be heard and decided in a vacuum; and that the courts of law while deciding the bail matters should apply its judicial mind to the collected evidence, so to avoid miscarriage of justice, but this court cannot ignore that every particular case has its own peculiar circumstances.

7. The Courts while considering bail matters of an accused, involved in non-bailable offences are to see, as to whether the collected material are sufficient for believing him guilty of an offence entailing capital punishment, then in that situation the concession shall not be extended, and if the same concession is granted to every accused without considering the merits of the case, on the mere ground that every accused is innocent, unless and until proven guilty, then the thin line drawn between the two categories of offence i.e. bailable and nonbailable would eliminate. This discretion must be exercised judiciously, after appreciating facts and circumstances of each case. In presence of significant material constituting reasonable grounds connecting the accused with the alleged offence, the courts are always slow to accede to the requested concession.

8. After applying judicial mind to the collected material on file, this court reaches nowhere but to hold that the petitioner prima facie seems connected with commission of the offence and could not succeed in making out a case for bail. This application is bereft of merits stands dismissed.

NOTED
27 MAY 2021
Khalid Khan

Announced
24.05.2021
Azam/P.S



JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah

