

JUDGMENT SHEETPESHAWAR HIGH COURT, PESHAWARJUDICIAL DEPARTMENTCr.M/Bail No: 1593-P of 2018JUDGMENT

Date of hearing.....28.08.2018.....

Petitioner (s) (Fareedun) By. Mr. Imad Hussain, Advocate.

Respondent (s) (State) By Mr. Moeenuddin Humayun, AAG.
(Mst. Ishrat daughter of deceased Abdullah Jan) in person.

SHAKEEL AHMAD:-J: Petitioner Fareedun son of Zarif

Khan, seeks his release on bail in crime No.1079 dated 11.09.1999 registered under Sections-302/324/34 PPC at Police Station Kalu Khan, wherein he is charged for committing murder of Abdullah Jan and attempting at the lives of complainant and one Farhad.

2. At the very outset, the learned counsel for the petitioner drew the attention of the Court to the affidavit sworn by the complainant Syed Mahmood Shah Bacha appended with the petition at page-20 and argued that the complainant has stated in the affidavit that he has falsely

charged the present petitioner, therefore, the prosecution case requires further inquiry into the guilt of the petitioner.

3. As against that, the learned AAG representing the State argued that the evidentiary value of the affidavit is to be adjudged during the trial after recording evidence; that after commission of offence, the petitioner remained at large for more than 18 years; that the petitioner has specifically been charged for committing murder of deceased Abdullah Jan; the post mortem report supports the contention of the complainant.

4. Mst. Ishrat daughter of the deceased appeared in person and contended that the complainant has effected compromise with the petitioner after taking money from him, therefore, the affidavit appended with the petition is not worth consideration.

5. I have heard the arguments of the learned counsel for the accused-petitioner, the learned AAG appearing on behalf of the State and daughter of the deceased Abdullah Jan.

6. Perusal of the record reflects that petitioner is one of the nominated accused for committing murder of deceased Abdullah Jan and attempting at the lives of the complainant and Farhad. After commission of offence, the petitioner remained at large for more than 18 years, he was arrested on 21.4.2018 and he has not offered any explanation for his noticeable abscondence, much less plausible. It is settled law that fugitive from law loses some of his normal rights, procedural as well as substantial, and bail may be refused on the sole ground of abscondence regardless of the merits of the case. In the case titled **Muhammad Sadiq..vs..Sadiq and others** (PLD 1985 SC 182) bail allowed by the Peshawar High Court, Abbottabad Bench, was cancelled by the august Supreme Court, wherein there was unexplained noticeable abscondence of 06 months of the accused. Same view was expressed by their lordships in the cases titled **Awal Gul..vs..Zawar Khan and others** (PLD 1985 SC 402), and **Ibrahim..vs..Hayat Gul and others** (1985 SCMR 382) and latest in the line is **Raja**

Fazal ur Rehman..vs..Muhammad Afzal and others

(2010 SCMR 179).

7. Perusal of the Post Mortem report of deceased Abdullah Jan reveals that he has sustained multiple firearm injuries on his body which too supports the prosecution. Coming to the affidavit appended with the petition, in the absence of the complainant, I leave its evidentiary value to be decided by the learned trial Court, mere submission of an affidavit by the complainant as alleged by the learned counsel for the petitioner in his absence would not make it out a case of further inquiry.

8. Another important development worthwhile to be mentioned is that supplementary challan has been put in Court and trial has commenced, and in such a situation, it has all along been the settled principle of law set by the august Supreme Court that when the case is fixed for evidence or the trial has begun or likely to commence, bail application should not be considered on merits and the matter be left to the trial Court, lest it may prejudice the case of either side. In this respect reliance can be placed on the

cases reported as Muhammad Sadik and others..vs..The State (1980 SCMR 203), Muhammad Ismail..vs..Muhammad Rafique and another (PLD 1989 SC 585), Mian Dad..vs..The State and another (1992 SCMR 1418), Said Akbar and another..vs..Gul Akbar and another (1996 SCMR 931), and Shahid Farooq..vs..The State and others (2011 SCMR 1619).

9. For what has been discussed above, this petition being bereft of merit is dismissed. However, the learned trial Court is directed to conclude the trial expeditiously. The office is directed to send the record back immediately.

Announced:
Dated. 28.08.2018

J U D G E

(S.B of Mr. Justice Shakeel Ahmad, Judge)

K. Ali