

BEFORE THE HON'BLE PESHAWAR HIGH COURT PESHAWAR



Bail Application No. 26/0-P/2017

Gulzar S/o Hayadar R/o Abazai presently Kir-ra, District
Charsadda.....(Accused/Petitioner)

VERSUS

1. The State
2. Mujahid Gul S/o Mufid Gul R/o Pir Baba Kallay, Abadzai
Charsadda.....(Respondents)

F.I.R NO: 673, DATED: 26/10/2016

UNDER SECTION: 302, 324/34 PPC

P. S: TANGI, CHARSADDA.

APPLCIATION U/S 497 Cr.PC FOR
GRANT OF BAIL TO THE
ACCUSED/PETITIONER IN THE ABOVE
SECTIONS OF LAW, TILL FINAL
DECISION OF THE CASE.

Respectfully Sheweth:

1. That the captioned case has been registered at
Police Station Tangi, Charsadda, in which the
accused/ petitioner has been falsely implicated.
(Copy of F.I.R is attached as annexure "A").

FILED TODAY
Deputy Registrar

22 NOV 2017

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EXAMINER
Peshawar High Court
15 FEB 2018

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)



Cr.M.BA. No. 2610-P/2017.

JUDGMENT

Date of hearing: **22.12.2017.**

Petitioner (s):- (Gulzar) by Nagas
Abmad Chamkani Advocate.

Respondent (s):- (State) by Iftikhar ul Yousaf AAG
Nemo for the Complaint.

MOHAMMAD IBRAHIM KHAN, J.- On

enumeration of the facts leading to lodging of the First Information Report vide F.I.R No. 673 dated 20.10.2016 charged u/ss. 302, 324/34 PPC registered at Police Station Tangi, Charsadda, the complainant Mujahid Gul accompanied by the corpus of Khalid reported that on the fateful day, he alongwith his brother Sajid Gul and his son deceased Khalid came out from their house in order to bring milk from their farm they reached at a place thoroughfare Mohallah Pir Baba Kanday situated in village Abazai 5/6 kilometers towards the west of Police Station Tangi.

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2. The accused/Petitioner Gulzar and his brothers Zarar, Sabz Ali and Kamil sons of Khaya Daar, on seeing them opened fire with their respective firearms in order to kill them. With the said fire shots, the deceased Khalid was hit who died there and then while both the complainant and his brother Sajid Gul escaped unhurt. This occurrence besides the complainant has been witnessed by his brother Sajid Gul.

3. By the time, this occurrence had taken place, the motive behind for this gruesome murder of his son and firing upon the complainant and his brother was not known.

4. The Petitioner was declined bail earlier by the Court of learned Additional Sessions Judge, Charsadda at Tangi vide his order dated 17.11.2017. Hence, this is another attempt seeking liberty by presenting this application before the Hon'ble High Court.

5. Having heard arguments of learned counsel for the Petitioner and learned A.A.G for


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the State, record with their valuable assistance gone through.

6. It is to mention here that the Respondent No. 2 Mujahid Gul is the complainant of this case who has later been named in case registered against him and is since then fugitive from law, therefore amongst the Respondents, only learned A.A.G on behalf of the State was heard.

7. Learned counsel for the Petitioner has referred to the order of this Court in Cr:M B.A No. 2201-P/2017 titled as "Israil alias Minaj vs the State etc" and the judgment in Cr.M B.A No. 2400-P/2017 titled as "Israil vs the State". In the given esteem verdicts in view of the observation in Para-3 of the earlier judgment and Para-4 of the latter judgment, it was kind enough that Petitioner Israil alias Minaj was granted bail in two different cases on the ground that the deceased has sustained two firearm entry wounds from the same direction having same dimensions of 1 x 1 cm. A general role of firing has been attributed to the

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on 2017 P Cr. LJ Note 8 (Peshawar) "Adam Khan V/S The State and another", 2016 SCMR 2046 " Muhammad Ramzan V/S The State and others" , 2014 P Cr. LJ 947 (Peshawar) " Abdullah Khan V/S The State and another", 2013 YLR 404 (Peshawar) " Gul Bacha V/S The State through Advocate Genera and another", 2005 SCMR 1402 " Arif Din V/S Amil Khan and another" and reported judgment of His Lordship Hon'ble Mr. Justice Ishtiaq Ibrahim has also been referred as delivered in Cr. M B.A. No. 109-A of 2017 titled as " Faisal Khan & 3 others V/S The State & Amanullah Khan" decided on 24.03.2017 at Peshawar High Court Abbottabad Bench. In the said judgment reliance has been placed on 1996 SCMR 1845 "Shoaib Mahmood Butt V/S Iftikhar-ul-Haq and 3 others", wherein the following view has been

formed:

16. In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party

case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed. In the case of Fazal Muhammad v. Ali Ahmad (1990 SCMR 391) in cross-cases the High Court granted bail to the accused on the ground that there was probability of counter-version being true as some of the accused had received injuries including a grievous injury on the head of one accused. It was held by this Court that in such circumstances the High Court was right in granting bail and no interference was warranted, In the same context, reference can be made to the case of Mst. Shafiqan v. Hashim Ali and others (1972 SCMR 682).

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5. Last but not the least learned counsel for rival parties have also affirmed that the complainant of this case has no objection if accused/petitioner from this side is granted bail. In this context reliance has been placed on 2017 SCMR 1730 "Ghulam Abbas alias Gaman and others V/S The State and others". The relevant citation of the judgment speaks of:-

"Present case was a case of two versions and two FIRs and it was difficult to determine as to which party was the aggressor. Counsel for both sides had no objection if accused persons from both sides were granted bail. Bail was granted to accused persons accordingly."

6. Where these cases FIR No. 871 and FIR No. 872 dated 15.10.2017 of the same Police Station Bhana Marai have been held and admitted to be of cross version and in position at this quandary it cannot be ascertained to give specific role to this Petitioner in this cross case. Where the combined study of the facts would fall the role of this Petitioner one of further inquiry within the ambit of sub-section 2 of

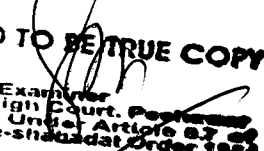
section 497 Cr.P.C thereby the grant of bail becomes right of the accused when the complainant of the cross case has no objection on the grant of bail. Thus it would be imperative for the Court to grant bail.

7. Accordingly, on acceptance of this petition the accused/Petitioner Rehman Shah is admitted to bail subject to 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 learned Judicial Magistrate concern, who shall ensure that the sureties are local, reliable and men of means.

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

Announced
Dt: 04.01.2018


JUDGE


CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 67 of
The Qanun-e-shahadat Order 1962
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