

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 12-A/2017

JUDGMENT

Date of hearing.....**17.04.2017**.....

Petitioners (Seerdad & another) By M/s. Ghulam Mustafa Khan Swati and Munir Paracha, Advocates.

Respondents. (State) By Raja Muhammad Zubair, AAG & (Complainant) By M/s. Qazi Muhammad Arshad and Malik Amjad Ali Awan, Advocates.

SYED MUHAMMAD ATTIQUE SHAH, J.- Through this single order, I intend to dispose of the present bail application and the connected **Cr.Misc. (BCA) No. 743-A/2016** titled “*Gul Khan Vs. The State & 07 others*” as both these matters are the outcome of one and same FIR bearing No. 113 dated 01.07.2016 registered under Sections 302 / 324 / 148 / 149 PPC at Police Station Pattan District Kohistan. The petitioners of this petition namely, Seerdad and Kareem Dad, are seeking their post arrest bail, while the petitioner of the connected petition seeks cancellation of bail granted to the accused-respondents, seven in number.

2. Brief facts leading to the instant petition are that the complainant, Gul Khan, while reporting the crime on the fateful day at 19:15 hours alleged that he alongwith his

brothers Abdul Latif and Mehboob-ur-Rehman and his son Usama had gone to the fountain for fetching water for *Iftari* and when they reached near Power House Pattan, there they came across the accused-petitioners and their co-accused (respondents in the connected BCA) who started altercation with them, followed by kicks, fists and stones blows, as a result of which, Wali Dad, Khair Muhammad, Amir Zada and Attique (accused-respondents of the connected BCA) caught hold of Abdul Latif, brother of the complainant, and the present accused-petitioner No.2 alongwith Mir Dad, co-accused, had given him blows with knives and got him injured. Similarly, Usama son of the complainant was caught hold by Gul Dad, Hasnain, Alamzeb and Imran (accused-respondents of the connected BCA) and was given knives blows by Rahim Dad and Syed Anwar, co-accused, with which he got injured, whereas his brother Mehboob-ur-Rehman was caught hold by Rizwanullah (accused-respondent of the connected BCA) and was given knife blow by Gul Zada, co-accused, hence, the FIR ibid was registered. Motive for the crime was stated to be previous children's quarrel.

3. Perusal of the record transpires that Imran, accused of case FIR No. 113, too after his arrest lodged a

report vide FIR No. 118 on 02.07.2016 regarding the same incident wherein he had charged not only the complainant Gul Khan but his co-accused namely, Osama, Mateen, Shehzada and Sher Muhammad. In that very transaction, effective role of stabbing knives blows was attributed to Shehzada and Osama.

4. Since in this case a fleet of accused have been charged for stabbing knives blows not only to the deceased then injured but the complainant and his son, therefore, first of all the accused-respondents of the connected BCA, seven in number, alongwith Said Noor, Gul Zada and Rahim Dad have applied for their post arrest bail before the learned Sessions Judge, Kohistan, who vide his order dated 21.09.2016 allowed bail to the accused-respondents and declined the concession of bail to their co-accused, named above. Thereafter, a bail petition was moved before this court by the co-accused, which too met the same fate, thus, lastly they approached to the Hon'ble Supreme Court of Pakistan, where vide judgment dated 16.03.2017 the Apex Court granted bail to Said Anwar and Raheem Dad while refused the said concession to Gul Zada.

5. It is pertinent to mention here that the learned trial court dismissed the plea of bail to the Said Anwar, Raheem

Dad and Gul Zada on the ground that they were attributed specific role in the FIR, whereas this court too had declined bail to them on the ground of being shared common intention, while the Hon'ble Apex Court, allowing bail to Said Anwar and Raheem Dad, has held that the question of vicarious liability, if any, could only be decided by the learned trial Court, however, refused bail to Gul Zada on the ground that he was charged for causing injury on vital part of the body of one of the injured PWs.

6. Here in this case a very intriguing aspect of the matter is that in the FIR though effective role of stabbing knives blows has been attributed to Seerdad and Kareem Dad, the present accused-petitioners, but from bare reading of the FIR it reveals that father name of Seerdad has been shown as Attique while in the instant petition his father name has been mentioned as Raqeeb.

7. According to the FIR the deceased then injured was shown to have caught hold by Wali Dad, Khair Muhammad, Amir Zada and Attique, whereas the accused-petitioner No.1 and 2 were shown to have stabbed knives blows on his head and stomach respectively, while the medico-legal report is altogether different from the stance of the complainant, taken in the FIR, because the injuries

have been shown as “*an incised sharp wound 3 inches long and ½ inch in width of clear cut margins present just below the interior border of it. **Scapula on the back**, an incised sharp wound 1½ x ½ inch with clear cut margin present **on the back**, 4 inches below the wound in the same line, a stitched wound present superficially **on upper side of right buttock**, 1½ inches long, a bruise of 2 inches x 2 inch on the past aspect of left hand and small abrasions on anterior aspect of right leg*”.

8. Later on the complainant recorded his supplementary statement under Section 161 Cr.P.C wherein he has altered his stance by charging another accused namely, Osama for the third injury on the right buttock of the deceased, besides the accused-petitioners. The said Osama was enlarged on bail by the court of learned Sessions Judge Kohistan on 29.08.2016 for the reason that his name was not mentioned anywhere in the FIR and no BCA against him was moved. If the above statement of the complainant is given worth, whereby another accused namely, Osama was charged for effective knife blow on the deceased, who was released on bail by the learned Sessions Judge Kohistan, then on the ground of rule of consistency, the accused-petitioners too deserve the concession of bail,

moreso, when no BCA has been moved by the complainant against the release order of accused Osama.

9. Keeping in view the above glaring contradictions between the medical evidence and ocular account coupled with the change in the stance of complainant, Gul Khan, the case of the accused-petitioners becomes one of further enquiry and, as such, they are held entitled to the concession of bail. Wisdom may be drawn from the case law reported as **2017 SCMR 538** titled "*Awal Khan & 07 others Vs. The State through AG KPK and another*".

10. So far as the bail cancellation application, moved by the complainant of the case, against the accused-respondents is concerned, not only in the FIR they have been attributed the role of catching hold of the victims, but the learned trial court, while deciding the bail matter, has rightly held that vicarious liability within the meaning of Section 149 PPC would be seen at the trial, thus, they were held entitled to the concession of bail.

11. Apart from the above, it is well settled principle of law that provisions of section 497 (5) Cr.P.C were not punitive in nature and there is no compulsion for cancelling bail, unless bail granting order was patently illegal, erroneous, factually incorrect and had resulted into

miscarriage of justice or where accused was found to be making efforts to misuse the concession of bail by either extending of threats or likelihood of tampering with persecution evidence, which is not available in the case in hand.

12. Resultantly, this application for bail is allowed and the connected bail cancellation application bearing No.743-A/2016 stands dismissed. The petitioners Seerdad and Kareem Dad are directed to be released on bail provided each of them furnishes bail bonds in the sum of rupees two lac (Rs.2,00,000/-) with two sureties each in the like amount to the satisfaction of Illaqa / Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

Any observations recorded in this order, being purely tentative in nature, shall in no way prejudice the proceedings before the learned trial court where the case be decided strictly on its own merits after recording evidence.

These are the detailed reasons for short order of the even date.

Announced:
17.04.2017.

/*Saif*/

J U D G E