

Judgment Sheet

IN THE PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT.

JUDICIAL DEPARTMENT

Cr.M.No.163-M/2017.

JUDGMENT

Date of hearing...28/04/2017.....
Petitioner (Bakht Zaman) By Mr. Sajdar Naseer, Advocate.....
State By Barrister Asad Hamir-ur-Rehman.....
Respondent (Sultan Ahmed) By Mr. Muqadar Khan, Advocate.....

ABDUL SHAKOOR, J:- Accused-petitioner after having refused the concession of bail in case FIR No.80 dated 24.03.2017, which was registered at police station Gandigar, District Dir Upper under sections 337-A (i)/337 A (iii)-337-F (i)/34 PPC by the fora below, now seeks the concession of bail from this court.

2. The prosecution case as per FIR which was lodged on the basis of daily diary No.7 dated 17.3.2017 are that Muhammad Sultan Ahmad complainant alongwith his brothers on 17.03.2017 at about 6:30 hours reached to the fields owned by them situated at place known as Nangaro Nala, wherein accused petitioner and his brother Imran have made a field (adai). When they were dismantling the walls in the said field suddenly the accused/petitioner and his

brother Imran who was duly armed with rifle emerged at the scene and started pelting stone at complainant party. As a result of which complainant got injured on ^kscull and right thigh which caused pain in his whole body, whereas his brother Anwar got injured on right thigh, foot and left leg and brother Ghulamullah got injured on right foot, ankle and left leg. Accused Imran has also resorted to firing from his rifle.

3. It was argued by the learned counsel for petitioner that complainant in FIR has not attributed the allegations of nasal injury to petitioner but medical report shows that amongst other injuries petitioner nose was also fractured. This shows that there is a clear cut conflict between the FIR and medical report, thus require further inquiry into the alleged guilt of petitioner. Due to that allegations accused/petitioner amongst other was booked under section 337-A (iii) PPC. He further argued that except the accusation of nasal fracture no other ~~fatal~~ injury is caused to petitioner. Petitioner is neither previous convict nor is habitual, hardened, desperate or dangerous criminal. In this regard he further stated that now it is well settled through the interpretation of superior courts that in all cases provided for in Chapter XVI PPC the normal

punishment to be awarded to an offender is payment of 'Arsh' and Daman and the optional punishment of imprisonment as 'Tazeer' provided for the relevant offence can be awarded to an offender only where he is previous convict, habitual, hardened or dangerous criminal or the offence has been committed by him in the name of honour and in the case of such offender, the sentence of imprisonment as 'Tazeer' is not to be less than $1/3^{\text{rd}}$ of the maximum imprisonment provided for the hurt caused. Being a case of further inquiry, the petitioner is entitled to the concession of bail.

4. The learned State counsel assisted by Mr. Muqadar Khan, Advocate learned counsel for the complainant vehemently argued that accused/petitioner in view of the injury caused to the complainant is not entitled for the concession of bail. As, his that act is an offence under section 337-A (iii) (Shaja-e-Hashmia) whereunder the maximum imprisonment is ten years.

5. I have given serious thought to the contention of learned counsel for the accused/petitioner as well as the learned State counsel. No doubt, accused/petitioner according to medical report, inter alia, was charged under section 337-A (iii) PPC for causing nasal fracture to the complainant, but it is ironical that complainant

has not remotely attributed the accusation of nasal injury/fracture in his statement which reduced into FIR. This means medical report is in direct conflict with the allegation contained in the FIR. Case of accused/petitioner, thus, requires further inquiry into the alleged guilt of petitioner. It is also noticed by this court that medical officer has opined that petitioner was having nasal fracture but there is no X-Ray film on the record to support such opinion. The case against the accused/petitioner require further probe on this count as well. Further, the trial of the case has not been commenced as yet.

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In view of above circumstances and the fact that trial is yet to take some time to commence, further detention of accused petitioner Bakht Zameen would not serve any useful purpose and it would be in fitness of things that he be released on bail. This application is allowed and the petitioner is directed to be released on bail provided he furnishes bail bonds in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of the learned trial court, who shall ensure that the sureties are local, reliable and men of means.

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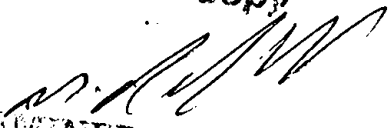
Above are the reasons for my earlier short order
of even date.

Announced.
Dt 28.04.2017.


JUDGE



Certified to be true copy


EXAMINED
Peshawar High Court, Swat Bench, 28.04.2017
Under Article 17 of Qanun-e-Mahkama-e-A'ma, 1974

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