

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

**Cr.Misc.BA No.1814-P/2015**

Date of hearing: \_\_\_\_\_

Petitioner (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Petitioner

Banaras Shah, being abortive to get the concession of bail from the two Courts below, through this further petition, seeks the same concession from this Court in case FIR No.150 dated 04.04.2015, registered under sections 302/34 PPC, in Police Station Topi, District Swabi, wherein he alongwith absconding co-accused is charged for committing the 'qatl-i-amd' of Abdul Hakeem Shah deceased with firearm on 04.04.2015 at 11.30 hours. Verbal altercation/ quarrel between the parties, during which course the incident took place, has been alleged as motive behind and in addition to complainant Zubair Shah, the incident is stated to have been witnessed by PW Sohaib Shah.

2. Arguments heard and record perused.

3. It appears from the record that about the same incident another FIR No.151 dated 04.04.2015 under section 324 PPC, in same Police Station Topi Swabi, has also been registered on the report of one Maqsood Ali Shah wherein Sohaib Shah, e eyewitness of the instant FIR, has been charged for attempting at the life of complainant Maqsood Ali Shah and causing him firearm injury. Oral altercation/ quarrel between the parties has also been alleged as motive behind the incident. In the instant case, Syed Abdul Hakeem Shah has lost his life while in FIR No.151 of the even date and of same Police Station, Maqsood Ali Shah has been shown injured, which injury has not been declared by the Medical Officer to be self inflicted or artificial. As evident from autopsy report of deceased Syed Abdul Hakeem Shah, he too, has sustained single firearm injury, which caused his death. So from both the sides, single injury has been caused to single person, but in the instant case the single injury resulted in death of Syed Abdul Hakeem Shah. When both the FIRs are taken in juxtaposition, the date, time and venue of occurrence as well as parties are the same, thus, the incident falls within the definition of cross version. Sohaib Shah accused of cross FIR has been already granted bail by this Court, though not on the ground of cross version, as the same was

not alleged by him nor was it brought into the notice of this Court at that time. However, as discussed above, the incident has been established to be that of counter versions. The prime consideration in cross version cases is as to who the aggressor was and who was aggressed upon and not the injuries caused to one side only or that the loss/ damage caused to one party is greater than caused to the other, which is only a relevant factor and does not have overriding effect. In this view of the matter, who has acted in self defence and who has attacked, is a matter of further inquiry, on the basis of which the petitioner is found entitled to the concession of bail in light of the dictum laid down by the Hon'ble Supreme Court in case titled, **“Muhammad Shahzad Siddique Vs the State and another” (PLD 2009 Supreme Court 58)** which runs as under:-

“Cases of counter-versions arising from the same incident, one given by the complainant in FIR and the other given by the opposite party, are covered for grant of bail on the ground of further inquiry as contemplated under section 497 (2) Cr.P.C. Bail in such cases is normally granted on the ground of further inquiry because question s to which version is correct

is to be determined by the trial Court after appraising the evidence recorded by it, for reaching the final conclusion in this regard. Plea of private defence is normally taken in case of counter-versions giving rise to question as to which party has acted in aggression and which party is an aggressed one”.

Same view has been reiterated by the Apex Court in case titled, **“Abdul Hameed Vs Zahid Hussain alias Papu Chaman Patiwala and others” (2011 SCMR 606)** in these words:-

“We have gone through both the FIRs and find that incident of both the FIRs took place on 27.09.2009 at 2. a.m. The place of incident of both the cases has also been shown on footpath corner of Street No.6-B Suleman Azad Road, New Kalri Karachi. From this position it is prima clear that the incidents of both the FIRs took place on the same date, time and place. However, this point can be properly thrashed out at the time of trial but presently no exception can be taken with regard to the said position. We have also examined both the FIRs and find that no tentative findings could be

given as to which party is aggressor therefore in the circumstance the High Court was justified in granting the bail to the respondents. The impugned order does not suffer from any illegality or irregularity as such it does not require any interference. The petition is dismissed. Leave refused”.

The aforesaid view has been re-affirmed by the Hon’ble Supreme Court in case titled, “**Hamza Ali Hamza and others Vs the State**” (2010 SCMR 1219), in the following words:-

“We have heard both the Advocate Supreme Courts and the learned Additional Prosecutor General, Sindh and perused the record with their assistance. Upon perusal of both FIRs, lodged by the parties against each other, it would appear that a free fight ensued between them in which hatchets and Lathis were used. Consequently, two persons from the petitioner’s side and one person from the complainant side received injuries. Though Sambhoo from the complainant side had been grievously injured and perhaps the other two persons from the petitioners side had received

minor injuries, it is difficult to ascertain at this stage as to who was the aggressor. Consequently, it would be unjust to refuse bail to the petitioners, particularly, when all the other from the complainant side are on bail”.

4. Deriving wisdom from the judgments of the Hon’ble Supreme Court (supra), this petition is allowed. Accused/petitioner is admitted to bail, provided he furnishes bail bonds to the tune of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

**Announced**  
**16.11.2015.**

**J U D G E**