

IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

B.A No.450 -B of 2020

Taj Ali Khan & Fidaullah
Vs.
The State etc.

JUDGEMENT.

Date of hearing 24.09.2020

Petitioner by: **M/S Pir Liaqat Ali shah and**
Muhammad Ashraf Khan Marwat advocates

Respondents by: **M/S Muhammad Rashid Khan dirma Khel and**
Fageeier Mehboob-ul-Hameed advocates.

State by: **Mr. Qudratullah Khan Gandapur Asstt: A.G**

SAHIBZADA ASADULLAH, J.-- The petitioners after having been booked in case F.I.R No. 154 dated 13.03.2020 applied for his post-arrest bail before the court of Sessions Judge, Lakki Marwat, which was declined vide order dated 27.08.2020. Feeling aggrieved the petitioners approached this Court through the instant bail petition.

2. The alleged precise facts of the prosecution case, as per contents of F.I.R, are that on 13.03.2020 at 1810 hours, the complainant Gul Nawaz Khan made a report to the local police in Emergency Room City Hospital, Lakki Marwat, alleging therein that on the eventful day, i.e. 13.03.2020, he along with his cousin Barkat Wali son of Wali Khan his co-villager was present near Kabir Gravyard, while his other cousin Mirza Ali Khan was also walking there; that at about 1745 hours, Fidaullah and Taj Ali sons of Amir Khan r/o Mohallah Surki Khel, Saeed Khel, presently

Michan Khel (petitioners herein) came there on motorcycle duly armed with Kalashnikovs; that accused stopped their motorcycle and started firing with their respective weapons upon Mirza Ali Khan, with the intent to commit his Qatl-e-Amd, as a result of which he (Mirza Ali Khan) was hit and fell down and thereafter the accused/petitioners also made firing upon the complainant and his companion Barkat Wali, with intent to commit their Qatl-e-amd, however, they luckily escaped unhurt; that after the occurrence the accused/ petitioners fled away from the spot on motorcycle; that when the complainant along with his cousin Barkat Ali attended Mirza Ali Khan, he had expired. Motive behind the occurrence was stated to be previous blood feud. On the report of complainant Gul Nawaz, murasila was drafted and sent to Police Station, on the basis of which instant F.I.R was registered.

3. Learned counsel for the parties along with Asstt: Advocate General, were heard at length, and with their valuable assistance the record was gone through.

4. The incident occurred on 13.03.2020 where the deceased was fired at who got injured and later on succumbed to his injuries in the hospital, which led to a charge against the petitioners. One Gul Nawaz Khan is the complainant of the case with one Barkat Wali as the eye-witness and the motive was stated to be previous blood feud. It is pertinent to mention that on the same day i.e. 13.03.2020, one Shafqatullah Khan PASI, recorded Daily Diary No.13, where he stated that on 13.03.2020, he was informed regarding a drug peddler busy in selling narcotics in the area and on information he reached there and arrested the accused, who along

with the contraband was sent to the Police Station and was still present in the area, when he received the information regarding the present occurrence and as such he rushed to the spot, which was adjacent to Kabir graveyard and found one person lying injured, who was there and then shifted to City Hospital, Lakki, and that later on his name surfaced as Mirza Ali Khan advocate. The Daily Diary further tells that he went after the accused and found them running, who were chased, commanded to stop but they did not and an encounter took place between the parties, which lasted for 20-minutes and he also requested reinforcement which was provided in the shape of rider squad; and that ultimately the accused/ petitioners were arrested and recoveries of two Kalashnikovs and ammunition were effected from their possession.

5. The two stories, one narrated by the complainant when he reported the matter in City Hospital Lakki and the other which we have in the shape of Naqal Mad No.13 dated 13.03.2020 tells in a different way. The police official who reached the place of the incident found only the deceased then injured lying on the ground, but no one was found present at the place of incident at the time when he reached there. Had the complainant and the eye-witness been present there, they would have reported the matter on the spot and would have charged the petitioners for the murder of the deceased and ineffective firing upon them, but they did not, whereas on the other hand in Naqal Mad No.13 the complainant and eye-witness did not find mention. The learned counsel representing the petitioners strongly objected and stated that Daily Diary No.13, cannot be taken into consideration at this stage as it amounts to

deeper appreciation of evidence, but we cannot welcome his this submission, as at bail stage the courts of law have not been prohibited to go through the available record as bail applications cannot be heard and decided in vacuum, even otherwise DD No.13 needs no interpretation rather a cursory glance tells of what Shafqatullah ASI observed and did on the spot. The two documents i.e. the report made by the complainant and the Daily Diary when placed in juxtaposition it tells of two different stories, one with the complainant and eye-witness who witnessed the incident and the other a competent police officer with no affiliation to either side who narrated what he saw. Though we are conscious of the fact to avoid any comment upon the status of the document but this Court can consider the theme of both the documents for the purpose of bail. The record further tells that two empties of 30 bore were recovered from the place of incident and on arrest of the petitioners after chase and encounter weapons were recovered from their possession, which were later on dispatched to the Forensic Sciences Laboratory along with the recovered empties for comparison where a negative report was received. We are conscious of the fact that while hearing bail applications tentative assessment is warranted with strong dislike for deeper appreciation of evidence, but we cannot ignore that bail matters cannot be decided in vacuum and that is what the apex Court has held in case titled **"Zaigham Ashraf Vs the State and others' (2016 SCMR 18)**.

"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought

for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground.”

6. Having said this, the tentative assessment of available record takes this Court to hold that the petitioners have been succeeded in making out a case for bail, being one of further inquiry, resultantly, this bail petition is allowed and the accused/ petitioners are admitted to bail, subject to furnishing bail bonds amounting to Rs. 300000/-(three lac) each with two sureties each in the like amount to the satisfaction of Trial Court / MOD concerned.

Above are the detailed reasons of my short order of the even date.

Announced.
24.09.2020
Azam/P.S



JUDGE.

(S.B)
Mr. Justice Sahibzada Asadullah

SCANNED


Khalid Khan