

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(*Judicial Department*)

Cr.M.BA. No.263-D/2017.

Muhammad Awais & 2 others
Vs.
The State etc.

JUDGMENT

Date of hearing: **30.8.2017.**

Appellant-Petitioner by: M/S Chaudhry Javeed
Akhtar & Sadiqullah Khan Kundi Advocates

Respondent by:Mr Adnan Ali Khan AAG.

SHAKEEL AHMAD, J.- Through the instant criminal miscellaneous bail petition No.263-D of 2017, petitioners Muhammad Awais, Kaleem and Muhammad Saleem seek post arrest bail in case FIR No.19 dated 11.7.2017, registered under Sections 4/5 of Explosive Substances Act read with Section 7 of Anti-Terrorism Act, Sections 21(i)/21(j) PPC and Section 15 of Arms Act of police station CTD, D.I.Khan.

2. The prosecution case, as set-forth in the crime report, are that Muhammad Jalil Khan Inspector/SHO of police station CTD alleged in his written complaint, sent to the police station that he received an information that some people are present

on the place of occurrence and are planning to commit an act of terrorism, on this he alongwith Fazal Rahman Khan S.I. and Arif Mahmood ASI alongwith other officials of CTD, went to the spot in the police van and saw that four persons were sitting under the shadow of a *keekar* tree which was at some distance of *Kacha* road. Seeing the police party, two out of four accused boarded on the motorcycle and attempted to escape but the accused sitting on the rear seat fell on the ground while the driver of the motorcycle escaped and during escape the envelope containing Rs:9,00,000/- of different denominations fell down from the person who escaped from the spot on motorcycle, which was taken into custody, rest of the accused were overpowered and arrested, who disclosed their names as Muhammad Awais, Muhammad Kaleem and Muhammad Saleem. On their personal search, a hand-grenade was recovered from the side pocket of Muhammad Awais and one 30 bore pistol without number alongwith fitted magazine containing six cartridges of the same bore and search of accused Muhammad Kaleem led to the recovery of explosive material weighing three kilograms and personal search of accused Muhammad Saleem, safety fuse

and one primes card was recovered, they were arrested on the spot. On cursory interrogation, it was disclosed to the police that the accused who decamped from the pot was wanted to the police in case FIR No.6 dated 16.02.2017, under Sections 302, 353, 404, 427, 148, 149, 21(j), 21(i) PPC/7 ATA. The accused-petitioners applied for post arrest bail before the learned lower Court which was declined vide order dated 28.7.2017, hence this petition.

3. The learned counsel for the petitioners mainly argued that actually the accused-petitioners were arrested from their houses on 23.3.2017 which fact is evident from the application of Muhammad Naseem, father of Muhammad Awais and Nasreen Bibi wife of Muhammad Saleem and sister-in-law of Kaleem, wherein it was alleged that on 23.3.2017 at 11:00 p.m, their houses were raided by the police without any lawful authority and took away Rs:9,00,000/- cash which were kept for the purpose of Hajj and also the male members of the family of the applicants. He next contended that there is no reasonable ground to believe that the accused-petitioners have committed the offence, but there is sufficient scope of further inquiry into their guilt.

4. As against that, the learned Asstt: A.G. representing the State, contended that the accused were caught red-handed and explosive materials were recovered from their personal possession which reasonably connects them with the commission of offence. He lastly contended that the offence with which the accused-petitioners are charged, falls within the prohibition contained in Section 497, Cr.P.C, therefore, they do not deserve the concession of bail.

5. Arguments heard and record perused.

6. Vide order dated 29.8.2017, the record of application submitted by wife of the accused Muhammad Kaleem and Muhammad Saleem was requisitioned from the office of the Superintendent of Police CTD, D.I.Khan Region. The application of father of the petitioner (Muhammad Awais) was duly entered vide No.535/CTD dated 17.4.2017 and the application of the wife of accused Muhammad Saleem was entered vide No.1225 dated 17.4.2017, which was sent to the District Police Officer vide No.816/CTD D.I.Khan dated 19.4.2017. After receipt of the same, the SHO CTD vide his comments dated 18.4.2017, denied the arrest of the accused, however, no inquiry/investigation was

conducted about the incident of abduction of the petitioners from their houses, as alleged by the complainant party.

7. Facts and circumstances of the case suggest that the investigation was one-sided and other aspects of vital importance were not touched much less investigated into without any explanation offered by the Investigating Officer, therefore, the case of the accused-petitioners falls within the ambit of subsection (2) of Section 497, Cr.P.C. In this respect, reference can well be made on the case of **Muhammad Noman Vs. The State and another (2017 SCMR-560)**, wherein it was held as under:-

“---S. 497(2)---Anti-Terrorism Act (XXVII of 1997), Ss. 7 & 9---Pakistan Arms Ordinance (XX of 1965), Ss. 13-2(A) & 20---Explosive Substances Act (VI of 1908), S. 4---Acts of terrorism, possession of illegal weapons, explosives and time-bomb---Bail, grant of---Further inquiry---Counter-Terrorism Department alleged that accused and co-accused persons were arrested while travelling in a car, that contained arms, ammunition, bombs, explosives and militant literature---Family of accused on the other hand alleged that accused was picked up from his house by some unknown persons and subsequently police showed his arrest; that the incident of accused's abduction was immediately reported to the police, and that a habeas corpus petition was also filed to find the whereabouts of the accused after his abduction---Written complaint

submitted by family of accused about his abduction from his house, was neither inquiry into nor investigated in any manner whatsoever, rather the same was deliberately suppressed by the police---Investigating officer had not opined that the accused was found connected with any militant group or had been found financier or provided any other facility to militants---Investigation/inquiry carried out was neither satisfactory nor free from malice and the accused's implication in present case was not free from reasonable doubt, thus, he could not be left at the mercy of the police---Investigation, in the present case, was one-sided and the other aspects of vital importance were not touched much less investigated into without any explanation offered by the investigating officer---Case of the accused was one of further inquiry into his guilt”.

8. In the instant case, no material was brought on record to show that the accused were found connected with any militant group or had been found financier or provided any other facility to militants.

9. Admittedly, the petitioners were arrested on 11.7.2017, and their alleged confessional statements were recorded by District Police on 17.7.2017. The question of its voluntariness or otherwise before a person who could never be thought to be independent, impartial, non-partisan and separated from those who were entrusted with

the job of investigation, is alarming, and is left to be decided by the trial Court after recording evidence.

10. In view of what has been discussed above, this bail petition is allowed and the accused-petitioners are directed to be released on bail subject to furnishing bail bonds in the sum of Rs:3,00,000/- with two sureties each in the like amount to the satisfaction of learned trial Court, who shall ensure that the sureties must be local, reliable and men of means.

Announced.
Dt: 30.8.2017.

JUDGE