

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**

(Judicial Department)

Cr.M BA No. 82-A/2020

Hashim Ali Vs the State


Date of hearing: 21.02.2020

Petitioner Hashim Ali by: Mr. Dildar Khan, Advocate.

State by: Sardar Muhammad Asif, AAG.

Nemo for the compliant despite service.

JUDGMENT



AHMAD ALI, J. Through the instant petition, the petitioner (Hashim Ali S/o Nisar Ahmed), has sought his post arrest bail, in case FIR No. 1026 dated 28.08.2019 under sections 324/34 PPC read with Section 15 AA KPK, P.S. Kot Najibullah (Harpur). Same relief was, however, declined to him by the learned Trial Court, vide order dated 21.12.2019.

2. Brief facts of the case as contended in the FIR are that injured complainant (Sajid S/o Manzoor Elahi) accompanied by his injured son Usama Ali reported the matter to the local police to the effect that his son in law Hashim Ali visited their house, had lunch and at about

02:30 PM, he asked his wife Mst. Kainat Kiran to accompany him. She refused upon which he tried to take her along forcibly. Upon intervention of the complainant, Hashim Ali took out knife from the folds of his trouser and inflicted blows to complainant on left forearm. Usama Ali, son of the complainant came to rescue the complainant who was also injured by the accused by inflicting knife blow on right side of his chest and right arm. Motive for the occurrence was strained relations between the accused and daughter of the complainant.

3. Arguments of the learned counsel for the petitioner as well as learned AAG heard and record of the case gone through.

4. Perusal of record reveals that the alleged occurrence took place on 28.08.2019 while the accused/petitioner was arrested on the next date of occurrence i.e. 29.08.2019 but the crime knife was still in the folds of his trouser, which was still blood stained. This fact makes the case of prosecution as one of further inquiry, as it is the anxiety of the accused to get rid of crime weapon as soon as possible.

5. Besides, as per medical report of Medical Officer, RHC Kot Najibullah, dated 28.08.2019, the injuries

found on the body of complainant were skin deep, while the injuries on the body of injured Usama have though been shown to be bone exposed, however, the nature of wounds is not mentioned. Keeping in view the injuries mentioned in both the MLCs, the question as to whether Section 324 PPC is applicable or not, is a question of further inquiry.

6. The accused/petitioner has been arrested on 29.08.2019 and since then is behind the bars. The challan in the instant case is complete. The trial has commenced and the case is posted for 05.03.2020 for prosecution evidence. Accused/petitioner as per available record is neither a previous convict nor hardened or disparate criminal. Similarly, there is no allegation that the offence was committed in the name or on the pretext of honour, as such the question as to whether the punishment of Ta'azir could be passed against him or not, keeping in view the provisions of Section 337 N(2) PPC, makes the case of accused/petitioner one of further inquiry.

7. In the case of Amir Vs the State (**PLD 1972 SC 277**) it was held that, "for purposes of bail, law not to be stretched in favour of prosecution. Benefit of doubt, if any arising, must go to the accused even at bail stage".

Similar view was taken in the case of Manzoor Vs the State (**PLD 1972 SC 81**). These principles so laid down, are based on enunciation of law in interpreting the provision of section 497, Cr.P.C and broader principle of justice. Till date, no departure or deviation has been made there-from by this Court then, these are the principles of law and have binding effect; and shall be construed as guiding principles by all the Courts in the matter of grant or refusal of bail.

8. In the circumstances, case of accused will require further probe to establish his involvement in the commission of the offence through reliable evidence as provided under Sub-Section (2) of Section 497 Cr.P.C.

9. Even otherwise, to curtail the liberty of a person was a serious step in law, therefore, the judges should apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively. Such exercise should not be carried out in vacuum or in a flimsy and casual manner as that would defeat the ends of justice because if the accused charged, was ultimately acquitted at the trial then no reparation or compensation could be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme

of law on the subject did not provide for such arrangements to repair the loss, caused to an accused person, detained in jail without just cause and reasonable grounds. Wisdom can safely be derived from case law reported in **2016 SCMR 18**.

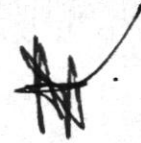
10. Moreso, it has also been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in **2008 SCMR 807 "Haji Muhammad Nazir Vs State"**.

11. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in **(1996 SCMR 1845)**.

12. For what has been discussed above and on tentative assessment of material available on record a case arguable for the grant of bail is made out.

Resultantly, this petition is allowed and the accused-petitioner, named above, is admitted to 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 learned Illaqa Judicial/Duty Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

Announced:
21.02.2020



JUDGE

Tufail/

SB

Hon'ble Mr. Justice Ahmad Ali