

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, BANNU  
BENCH

(Judicial Department)

**Cr: Misc: BA # 407-B / 2017**

Muhammad Nawaz                      Versus                      The State etc:

**JUDGMENT**

Date of hearing                      11.12.2017

Petitioner(s)/Appellant (s) : **By Salah-ud-Din Khan**  
**Marwat, Advocate.**

Respondent(s) : **State By Shahid Hameed Qureshi &**  
**Others By Muhammad Yaqoob Khan**  
**Marwat, Advocate.**

**ABDUL SHAKOOR, J---** Through this common

judgment, I intend to dispose of instant BA # 407-B

of 2017, connected B.A # 408-B / 2017, and BA

No.409-B / 2017, respectively, filed by Mohammad

Nawaz, Tauseef Ahmad and Sikandar Khan

petitioners / accused, being outcome of one and the

same FIR # 196 dated 02.6.2017 registered U/Ss-

302/324/34 PPC, at PS, Tajori District Lakki

Marwat. The petitioners / accused were declined bail

by the learned Additional Sessions Judge-II, Lakki  
(S.B) Justice Abdul Shakoor

Marwat vide orders dated 05.7.2017 and 23.6.2017, hence, approached this court for the concession of bail.

2. Short relevant facts of the prosecution case as set out in the FIR are that Nadir Khan complainant along-with dead bodies of his son Abbas Khan and nephew Dil Jan on 02.6.2017 at 21:30 hours reported the matter to police in injured condition to the effect that his niece namely, Mst:Shamshada Bibi is married to Tauseef and about three months ago relations between the spouses became strained. On the eventful day he along-with his son Abbas Khan and nephew Dil Jan were going to the house of his niece situated at Ghulam Khel Adamzai in order to reconcile the matter. On reaching near the house of said Tauseef at about 18:45 hours Tauseef, Mohibullah sons of Nawaz Khan, Muhammad Nawaz s/o Mir Ghafar and Sikandar s/o Muzzafar residents of Ghulam Khel

Adamzai duly armed with Kalashni-kovs came out of the Baitak of Tauseef and on seeing the complainant party, all the four accused fired at them with intention to kill, as a result of which, Abbas Khan and Dil Jan got hit and fell down on the ground while the complainant received injury in his head. Accused after commission of the crime fled away from the spot. Abbas Khan died on the spot while Dil Jan injured succumbed to his injuries on the way to hospital. Motive as disclosed in the report was dispute over women-folk. The accused were charged for the commission of crime. Thus, the accused were booked in the ibid FIR.

3. Learned counsel for petitioners / accused contended that the orders of the learned lower court are capricious, perverted, against facts, law and is against the settled norms of august courts in administration of criminal justice; that the story of FIR is highly doubtful and the petitioners / accused

are innocent and have been falsely charged; that no specific role of firing has been attributed rather a general role of firing has been attributed to all the accused; that the circumstantial evidence in shape of blood stained earth, recovery of empties from the spot and blood stained garments also falsifies the complainant's version; that complainant has not come forward with clean hands and he has suppressed the factum of counter version as given in FIR No. 197 of the even date U/S-324/34 PPC; that site-plan, medicolegal and PM reports and FIR contradicts each other; Learned counsel for petitioners stressed much that the present case is a cross case of case FIR No.197 of the even date and Police Station registered under Section. 324/34 PPC lodged by one Mohibullah being complainant against the complainant party of the instant case FIR No-196; that it is not ascertainable that who was aggressor and who was aggressed upon; that the

above all suggests the case of petitioner / accused one of further inquiry.

4. Conversely, the learned Addl: A.G appearing on behalf of State duly assisted by the private counsel for respondent / complainant vehemently opposed the arguments of learned counsel for the petitioners / accused by arguing that mere lodging an FIR against the complainant party of the instant case as counter blast does not make the alleged incident as cross-version for the purpose of bail of petitioners / accused; that the petitioners / accused are directly charged for the commission of the offence wherein two persons have lost their lives and the complainant got injured which comes under the Prohibition contained under Section. 497 Cr.P.C; that the medical evidence, motive, recoveries support the prosecution case, thus, petitioners / accused are not entitled for the concession of bail at this stage.

5. Arguments of learned counsel for the parties as well as of learned AAG for the State heard and record gone through with their valuable assistance.

6. Perusal of record reveals that the accused / petitioners are directly charged by name in the initial murasila report as well as in the FIR for the commission of offence; in the light of the motive so introduced and the fact of relationship between the parties who are co-villagers, question of mis-identification does not arise at all. The accused / petitioners have been attributed effective role of firing at the two deceased and the injured complainant. Moreover, the offence also falls within the ambit of prohibition contained U/S-497 Cr.P.C.

7. Mere floating counter version in shape of cross case FIR # 197 dated 02.6.2017, in the circumstances shall not be ground for grant of bail, reliance is placed on case titled "*Nasir Muhammad*

*Wassan and another V. The State (1992 SCMR 501)"*

8. Tentative assessment of the available record shows that the accused / petitioners have directly been charged in the initial report for heinous offence, as a result of which two persons have lost their lives while the complainant himself received Fire-arm injuries. The punishment provided for the offences falls within the restrictive clause of Section. 497 Cr.P.C. Recoveries from the place of occurrence, Post Mortem reports of the deceased persons and medicolegal report of the injured prima-facie connects the petitioner / accused with the commission of offence. The motive has also been well explained for the alleged occurrence, and there is no chance of mis-identification as the parties are not only co-villagers but also relative inter-se. Much has been argued before this court from either side, but discussion on all these points would amount to

deeper appreciation of evidence at bail stage which has always been deprecated by the Hon'ble Superior Courts.

9. The mere registration of cross case would not furnish the court a valid ground for extending the benefit of concession of bail to the accused who other-wise on the basis of available record appears to be prima-facie connected with the crime which falls within the Prohibitory clause of Section. 497 Cr.P.C. As already hinted hereinabove that complainant have assigned the specific role to the accused persons for causing death to one of his son and nephew and injured himself severely with lethal weapon. In this view of the matter prima-facie opinion of further inquiry in favour of petitioners / accused being not possible, thus, question of further inquiry would not arise at all mere on the registration of the cross case vide FIR No. 197. In this regard reference can be made to ***Hafiz Khuda Bakhsh V.***



*State (PLD 1988 Supreme Court 413), Arbab Ali V.*

*Karnosi & others (1985 SCMR 195), Shahadat Ali*

*V. Mubarak Shah and another (PLD 1986 Supreme*

*Court 347) and Mst: Bashiraan Bibi V. Nissar*

*Ahmad Khan (PLD 1990 Supreme Court 83).*

10. For what has been discussed hereinabove, the petitioners / accused have failed to make out a case for the indulgence of this court to extend them the benefit of concession of bail, thus, this petition being without any substance is hereby dismissed.

Announced.  
11.12.2017

**J U D G E**

\*Imranullah\*