

**Judgment Sheet**

**IN THE PESHAWAR HIGH COURT, PESHAWAR,**  
**JUDICIAL DEPARTMENT.**

**Cr.Misc. BA No. 1322-P/2017.**

**Zahid Ali...vs...The State.**

**JUDGMENT**

Date of hearing.....28.7.2017.....

Petitioner(s) by Mr. Hussain Ali, Advocate.

State by Syed Qaiser Ali Shah, AAG.

Complainant by Sahibzada Riazat Ul Haq, Advocate.

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**MUHAMMAD AYUB KHAN, J:-** Petitioner, Zahid Ali

s/o of Sardar Muhammad, seeks his release on bail in case FIR No. 436 dated 24.5.2017 registered under section 302-457 PPC at P.S Mathra, Peshawar, after being remained unsuccessful to get the same relief from the learned lower court.

2. SHO P.S Mathra, after getting information reached the house of Zahid Ali complainant (now accused-petitioner). He found the dead body of a young boy in the house of petitioner. Petitioner reported that he was asleep alongwith his family members of the house. After hearing some noise he got up. He saw the deceased in his house who had entered the house for theft. The complainant/accused-petitioner raised lalkara and fired at

the deceased who got hit and died. After identification the dead body was identified to be of Shahid son of Yousaf Ali. As per inquest report the dead body was identified by the brother and sister of the deceased. Likewise the dead body was identified again by the brother and sister of the deceased before the Doctor at the time of Postmortem examination. On 27.5.2017, statement of mother of the deceased was recorded under section 164 Cr.PC. She charged the accused-petitioner for the murder of her son.

3. Arguments of the learned counsel for the parties heard and record perused with their assistance.

4. As per the accused-petitioner he acted in the defence of his property. The learned counsel for petitioner referred to section 103 PPC, for convenience same is reproduced below:

**"103. When the right of private defence of property extends to causing death.**

**The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:--**

***First.* Robbery;**

***Secondly.* House-breaking by night;**

***Thirdly.* Mischief by fire committed on any building, tent or vessels, which building, tent or vessel is used as a human**

dwelling or as a place for the custody of property;

*Fourthly. Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised."*

As per ibid section the right of private defence of property extends to causing death in case of house-breaking by night.

5. The occurrence took place at 1.00 am night. Section 105 PPC is in respect of commencing and continuance of the right of private defence of property, according to which "*the right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.*"

6. The occurrence took place in the house of the accused-petitioner and the dead body was found by the police in the house of the petitioner. At present, it seems that the petitioner acted in private defence of property, hence he is entitled to the concession of bail. It will be seen at the trial if he has exceeded this right. Let the prosecution prove so, through cogent evidence.

7. For the reasons given herein above, the instant Cr.Misc. BA No. 1322-P/2017 is accepted and the accused-petitioner is allowed bail provided he furnishes bail bonds

in the sum of Rs. 200,000/- (Rupees two Lac) with two local, reliable and men of means sureties, each in the like amount to the satisfaction of Ilaqa Judicial Magistrate/ MOD.

8. The observations given by this court while deciding bail application, are not to be considered during the trial of the accused, which are tentative in nature and shall not, in any manner, influence the trial Court, which is free to apprise the evidence strictly in accordance with the law and merits of the case.

*Announced on;  
28<sup>th</sup> of July, 2017  
\*Zarshad\**

  
JUDGE

*Office  
29/7*