JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M B.A No. 967-M/2022

Naseem Ullah v. The State & another

Present: Muhammad Hamayoun, Advocate for the petitioner.

Mr. Saeed Ahmad, Asst:A.G for the State.

Mr. Nazir Khan, Advocate for the complainant.

Date of hearing: **20.12.2022**

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. Having been charged for attempted murder and hurt by rash or negligent driving in furtherance of common intention and possession of unlicensed arms, Naseemullah has sought his release on bail. The report has been lodged against the petitioner and another, on the strength of FIR # 86, registered on 06/11/2022, u/ss. 324/337-G/34, PPC; 15-A.A., in the Police Station of Sahib Abad of District Dir Upper. The petitioner's bail plea has not found favour with the trial Court.

2. The complainant, Islam Zamin Khan, reported to the local police in the Emergency Ward of Tehsil Headquarter Hospital of Wari that on the eventful day, his brother, injured Shakirullah, was taking breakfast for labourers, who were working in his under construction

house. At 10:20, hours, when he reached to the place of the occurrence, a motorcar (Vitz) coming from Sahib Abad Bazaar, collided with him, due to which he fell on the ground. Two persons, namely, Naseem Ullah (the petitioner/accused) and Masbeh Ullah sons of Muhib Ullah, residents of Kasono, Sahib Abad of Tehsil Wari, District Dir Upper, de-boarded from the aforesaid motorcar. Naseem Ullah, the petitioner/accused stabbed Shakirullah with a knife with the intention to kill him. Resultantly, he received injuries on his head. Co-accused Masbeh Ullah gave stick blows to the victim, due to which he felt pain on his body. Similarly, the petitioner/accused and his co-accused also torn clothes of the victim. The occurrence was stated to have been witnessed by the complainant, Altaf Hussain, his brother and Noor Rahman. Motive behind the occurrence was stated to be previous enmity.

3. I have heard arguments of learned counsel for the parties and the learned Assistant Advocate General, for the State and perused the record. Learned counsel for the petitioner/accused relied on the cases of *Rafeed Niaz*, *Akhtar Ullah alias Akhtar Ali* and *Ali Muhammad.*[1] In first case, the medical report was materially deficient in its

[1] *Rafeed Niaz v. The State and another* (2021 SCMR 1467); *Akhtar Ullah alias Akhtar Ali v. The State and another* (2021 SCMR 1287); and *Ali Muhammad v. The State* (PLD 2009 Lahore 312)

contents and did not qualify to be medical evidence. In the next case, the medical report of the victim was silent on the dimension of the injury and the weapon of offence was not recovered from the accused. The third case focuses on the application of section 337-N, PPC, in the context of different kinds of hurts. Thus, in the circumstances of the case in hand, the above-referred cases could be of no help to the petitioner/accused.

4. Conversely, the cases the learned counsel for the complainant produced are *Aurangzeb*; *Haji Shah Behram*; *Noor Aslam*: *Ghazan Khan*; *Haji Muhammad Nazir* and *Khalid*.[2]

5. There is an established judicial opinion that the facts and circumstances of criminal cases immensely differ from each other, requiring assessment of culpability of an accused person within the purview its own atypical circumstances. This opinion has been given by the august Apex Court in *Haji Muhammad Nazir* reported in 2008. The latest case in which this opinion has been reiterated is *Haji Shah Behram*. The august Apex Court has observed:

> **"Criminal cases, invariably resting upon vastly distinguishable facts, do not admit space for**

[2] *Aurangzeb v. The State and others* (2022 SCMR 1229), *Haji Shah Behram v. The State and others* (2021 SCMR 1983), *Noor Aslam v. The State through P.G. and another* (2021 SCMR 1225), *Ghazan Khan v. Mst. Ameer Shuma and another* (2021 SCMR 1157), *Haji Muhammad Nazir and others v. The State* (2008 SCMR 807) and *Khalid v. The State and another* (2018 MLD 398) [Peshawar]

hard and fast rules, empirically applicable with any degree of unanimity in every situation; in each case culpability of an accused is to be assessed, having regard to its own peculiar facts and circumstances, therefore, determination of "sufficient grounds" in contradistinction to "further inquiry" has to be essentially assessed, with a fair degree of objectivity on the basis of evidence collected during the investigation; wording employed as "there are no reasonable grounds for believing that the accused has committed a non-bailable offence" is an expression of higher of import and, thus, cannot be readily construed in the face of material, prima facie, constituting the offence complained. "Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial subsequently after evaluation of evidence" [PLD 1994 Supreme Court 65 (Shah Zaman and others v. The State and another)]. Similarly, "mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection (2) of section 497, Cr.P.C. [PLD 1988 Supreme Court 621 (Asmat Ullah Khan Vs. Bazi Khan and another)]. It clearly manifests that expression "further inquiry" is a concept far from being confounded in subjectivity or to be founded upon denials or parallel stories by the defence; it requires a clear finding deducible from the record so as to be structured upon a visible/verifiable void, necessitating a future probe on the basis of material hitherto unavailable."

6. The application of "further inquiry" was also discussed in a 1985 case of *Arbab Ali.*[3] The following observation of the august Apex is worth perusal:

> **"It needs to be clarified that bail can be allowed (in a case otherwise allegedly falling under the prohibition contained in subsection (1) of section 467) under subsection (2) of section 487, Cr.P.C. when there are sufficient grounds, for further inquiry into the guilt of the accused but**

[3] *Arbab Ali v. Khamiso and others* (1985 SCMR 195)

> **only on the condition when the Police Officer or the Court at any stage of investigation, inquiry or trial, as the case may be, comes to a definite conclusion that there are no reasonable grounds for believing that the accused has committed a non-Bailable offence. Without this finding bail cannot be allowed under subsection (2) on mere ground that there are sufficient grounds of further inquiry."**

It seems pertinent to mention here that in *Aurganzeb* and *Haji Shah Behram,* the august Apex Court cancelled bails granted in cases registered under sections 324/34/337, PPC; and in *Noor Aslam*, upheld a bail cancellation order.

7. Coming to the case in hand, on a tentative assessment of the material available on the record, it appears that the petitioner/accused has been directly charged in the FIR with a specific role of having caused knife blows to the victim on his head, which is doubtlessly a vital part of the body. He has also been charged for tearing clothes of the victim. He has been stated as sitting in a motorcar that first collided with the victim, as a result of which the victim fell on the ground. As the FIR story reflects, it was after the collision that the petitioner attacked on the victim. On search of the motorcar, incriminating articles, such as, a knife and two chargers containing 20 rounds of 7.62 bore rifle have been recovered. The site plan shows the petitioner's presence on the spot. The observation in the medical report shows that knife blows have been given to the victim on his head. It

follows that the FIR, the site plan and the medical report tentatively link the petitioner/accused with the commission of the offences in hand. Yet another significant aspect is that a Motor Vehicle Examiner has found no mechanical fault in the motorcar in which the petitioner/accused was sitting and that was initially stated to have collided with the victim.

8. Learned counsel for the complainant argued that while the parties appeared before the trial Court for a hearing in the instant case, some relatives of the petitioner/accused chased the complainant party. He produced a copy of an FIR No. 345 dated 29.11.2022, registered by Adil Inayat, PASI of Police Station Wari, u/s. 15-A.A. He also produced a copy of another criminal case, bearing FIR No. 188 dated 30.08.2002, registered u/ss. 377/337-G/34, PPC, and 12 Z.O in Police Station Wari, uncovering previous enmity between the parties.

9. As discussed above, a prima facie connection exists against the petitioner/accused for the reasons that he has been directly charged for having caused knife blow to the victim on head, which appears to be an attempt on his life; the site plan and the medical report support the charge against him. Moreover, there is no question of his identification. The occurrence has taken place on broad

daylight. The punishment provided for the offence for attempt to commit murder is hit by the prohibitory clause of section 497, Cr. P.C.

10. Resultantly, the instant bail petition is dismissed. The observations recorded hereinabove shall have no bearing on the merits of the case.

Announced
Dt: 20.12.2022

JUDGE

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