

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M No.477-A of 2015

JUDGMENT

Date of hearing.....21/09/2015.....

Petitioner...(Saleem Khan) by Mr. Nadeem Khan, Advocate.....

*Respondent ...(The State) by M/S Raja Muhammad Zubair, DAG and,
Mr. Maqbool Hussain, Advocate .*

QALANDAR ALI KHAN, J:- Accused/petitioner, Saleem Khan, is seeking post arrest bail in case vide FIR No.288 dated 07.07.2015 under Sections 365/316/34 PPC Police Station Khan Pur, District Haripur, which was lodged on the report of Wahid Gul, complainant/respondent No.2, who reported to the police in the Emergency Ward of DHQ Hospital Haripur at 1150 hours on 05.07.2015 that earlier in the day at 9.30 AM he was present on duty in Glo Bandi when he received information about his wife Mst Mashrana Bibi and daughter

Mst Ayesha Wahid taken to a Private Hospital in injured condition whereupon he reached Mang Private Hospital where he was told by his wife and daughter that they were coming to Civil Hospital Akhra from Koli Nara for treatment in Suzuki No.396/KH and when at 9.30 AM they knocked at the rear window glass of the Suzuki at Akhra stop, driver of the Suzuki accelerated speed of the Suzuki instead of stopping the same, forcing both his wife and daughter to jump out of the Suzuki out of fear and the Suzuki driver made good his escape from the spot in the Suzuki. The number of Suzuki was noted by some one present there, who also witnessed the occurrence and brought his wife and daughter in injured condition to private Hospital Mang for treatment by Dr. Ihtisham and informed him on mobile phone. The injured were shifted to Civil Hospital Haripur after first aid treatment in the private hospital.

2. The injured, Mashrana Bibi, wife of the complainant, had sustained head injury in the incident and succumbed to the injuries sustained

by her on her way from DHQ Hospital Haripur to ATH Abbottabad, while the other injured Ayesha Wahid, survived injury on her left arm. In her statement under Section 164 Cr.PC, recorded on 07.07.2015, Mst Ayesha Wahid charged driver of Suzuki No.398/KH for the offences. The accused/petitioner and co-accused Abdul Waheed secured ad-interim pre-arrest bail on 13.07.2015 and 08.07.2015, respectively and were formally arrested in the case; but the ad-interim pre-arrest bail granted to both the accused/petitioner and co-accused were recalled/cancelled by the learned ASJ-III. Haripur, vide order dated 18.08.2015. The suzuki bearing No.396/KH was handedover to the police by its owner Haji Khan Afsar and the accused/petitioner also handed over his driving liecnese to the police. The accused/petitoner and co-accused Abdul Waheed made pointation of the secne of the occurrence to the police. The accused/petitioner and co-accused Abdul Waheed moved the forums below for post arrest bail, but bail was declined to the accused/petitioner; while

co-accused Abdul Waheed succeeded in securing bail from the Court of learned ASJ-III, Haripur, vide order dated 05.09.2015. After completion of investigation, complete challan has been submitted in the case on 09.09.2015.

3. Arguments of learned counsel for the accused/petitioner, learned Assistant Advocate General assisted by learned Counsel for the complainant/respondent No.2 heard, and record perused.

4. It may be observed at the very outset that non charging of the accused/petitioner in the FIR by the complainant would not be fatal for the case of prosecution at this stage, keeping in view facts and circumstances of the case, rather non charging of the accused/petitioner in the instantly lodged report would rule out the possibility of false implication of the accused/petitioner with malafide intention. Besides, the role of the accused/petitioner is quite distinguishable from co-accused Abdul Waheed, already admitted to bail by the learned ASJ-III, Haripur, as the latter

had been charged only for occupying the front seat along with the accused/petitioner at the time of occurrence, having no active role in the commission of the offence, whereas the accused/petitioner is charged for the heinous act of speeding up the Suzuki when he was asked to stop the same, thereby forcing both the deceased and injured to jump out of the Suzuki while apprehending threat to their honour, resulting in injury to Mst Ayesha Wahid and also fatal head injury to Mst Mashrama Bibi, leading to her death. The presence of the accused/petitioner on the wheels at the time of occurrence has been established during investigation through statements of eye witnesses from the general public who were statedly present on the spot at the time of occurrence and also through the statement under Section 161 Cr.PC of owner of the Suzuki namely Haji Malik Afsar.

5. In short, the material available on record, including ocular and circumstantial evidence, prima facie connect the accused/petitioner with the

offence falling in the prohibitory clause of section 497 Cr.PC, thus disentitling him to the concession of bail. Therefore, the bail petition is dismissed.

Announced.
21.09.2015

J U D G E