

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**Cr.M/BCA No.2118-P/2017**

**JUDGMENT**

Date of hearing.....16.02-2018.....

Petitioner (State): By Mian Arshad Jan, AAG.

Respondents (Aqal Khan etc)     In Motion.

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**QALANDAR ALI KHAN, J.-** The State through the Advocate General, Khyber Pakhtunkhwa, Peshawar (Petitioner) assailed release on bail of all the three accused/respondents by the Judge, Anti Terrorism Court, Kohat Division, Kohat in case FIR No.09 dated 20.05.2017 under Sections 302/324/353/427/148/149 PPC and 7 ATA Police Station CTD Kohat Region.

2.        The FIR in the case lodged on the report of Amanullah Khan SI Investigation Staff Lachi would show that no one was charged by name in the FIR for the ambush on the raiding police party returning in the motorcar and official vehicle after performance of their duty. The complainant/SI, however, claimed that he and his companion constables saw two armed persons in the

headlights of the vehicle and that he could identify them if brought before him. According to the complainant, they also returned firing in order to overpower the said persons who had opened fire at them but they managed to escape while taking advantage of darkness and nearby bushes. As a result of firing by the assailants, Khanullah SHO occupying the driving seat and Tahir Mahmood ASHO occupying the front seat while Tanveer Hussain HC and constable Abid No.71 occupying the rear seat, had already succumbed to the fire arm injuries sustained by them during firing of the said unknown accused.

3 The learned Judge, Anti Terrorism Court, Kohat Division, Kohat, admitted the accused/respondents to bail, mainly, on the grounds that although the complainant/SI had mentioned in the FIR that he could identify two armed persons if brought before him but there was no identification parade conducted by the I.O; and that the occurrence had taken place at 2125 hours of night and further that the accused/respondents had been charged after delay of about 13/14 days. Moreover, according to the learned Judge, Anti Terrorism Court, the accused/respondents had remained in police custody for sufficient period of time but neither they made confession before any Court of law, nor anything was brought on the record that the accused/respondents and deceased police officials had any previous enmity or ill will, thus making case against the accused/respondents that of further inquiry.

4. The learned AAG, during the course of his arguments, could only refer to recovery of a large number of crime empties from the spot during spot inspection by the I.O and also a positive report by the firearms expert about these empties and the weapons of offence recovered on the pointation of the accused/respondents, besides CDR data of the cell phones of the accused/respondents; but it needs be stressed here that the above referred material made available during investigation formed part of corroborative evidence and could not be regarded as substitute for direct incriminating ocular and circumstantial evidence which was, indeed, lacking in the case, as neither the accused/respondents were charged in the FIR nor there was independent eye witness account of the occurrence, and the accused/respondents were also not identified in a properly conducted identification parade by the complainant/SI who claimed to have identified two of the unknown accused in the headlights of the vehicle. In the circumstances, there could be no escape from the conclusion arrived at by the learned Judge, Anti Terrorism Court, Kohat, that the case against the accused/respondents was subject to further inquiry.

5. As such, the bail granting order of the learned Judge, Anti Terrorism Court, Kohat, does not

warrant interference by this Court; therefore, the bail  
cancellation application is accordingly dismissed in  
*limine*.

**Announced**  
**16-02-2018**

**J U D G E**

*\*Ayub\**