

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

Cr. Misc: B.A No. 410-/2023.

**Dilabaz Khan
Vs
The State and another.**

**JUDGMENT
Case FIR No.165 dated 27.6.2023 under sections
302/34 PPC of PS Kakki, District Bannu.**

Date of hearing _____ 05.9.2023 _____.

For petitioner:- Mr. Anwar-ul-Haq, Advocate.
For State:- Mr. Umer Qayum Khan, AAG.
For respondents:- Mr. Farooq Khan Sokari, Advocate.

FAZAL SUBHAN, J.- Through instant petition, the petitioner Dilbaz Khan alias Dilabaz Khan seeks his post arrest bail in the above referred case.

2. Brief facts of the case as per contents of FIR are that on 27.6.2023 at 20:10 hours complainant Muhammad Ibrar while present with dead body of his nephew Khushnood Ali Khan, lodged report, at DHQ Hospital Bannu to the effect, that on the day of occurrence a scuffle took place between one Musawar Khan son of Dilabaz Khan and deceased Khushnud Ali Khan. Thereafter

Musawar Khan went to his house while he (complainant) along with Khushnud Ali Khan went towards an under construction house and were busy in construction work. In the meanwhile Dilbaz Khan (the present petitioner) and absconding co-accused Wajahat Khan, at about 18:45 hours came duly armed with Kalashnikovs and started firing at Khushnud Ali Khan with the intention to commit his murder, resultantly he was hit and got injured, whereafter accused managed to decamp from the spot. Motive for the offence was described to be scuffling between Khushnud Ali Khan and Musawar Khan (son of the petitioner). He shifted the injured but he succumbed to his injuries while being shifted to the hospital. The complainant, therefore, charged the petitioner and his co-accused for the murder of deceased Khushnud Ali Khan.

3. With this background of the case arguments of learned counsel for the parties and learned AAG for the State heard and record scanned through.

4. From the assertions in the FIR, it is clear that petitioner and absconding co-accused are directly charged for firing upon the deceased Khushnud Ali Khan in a promptly lodged report. It is a day light occurrence and the parties being co-villagers are known to each other,

hence there is no chance of mistaken identity. During investigation, the I.O recovered blood through cotton from the place of deceased, 4 empties of 7.62 bore from the place of co-accused coupled with positive FSL report. The site plan shows that at the relevant time of occurrence, the deceased was present at point No.1 which is stair case while petitioner was at point No.3 a place inside the under construction house and point B is a spot wherefrom a spent deshaped bullet was recovered, hence prima facie the presence of spent deshaped bullet shows that it could be fired from point-3. The non-recovery of empty from point-3 has been explained by the investigation officer in the site plan. The medical evidence is also in line with the prosecution story and established the unnatural death of deceased. Thus presently reasonable grounds exist to believe that the petitioner is prima facie connected with the offence, which is punishable with death or imprisonment for life, hence on merits, the petitioner is not found to be entitled to concession of bail.

5. The petitioner has taken plea of alibi alleging to be not present on the spot at the time of occurrence and in this respect he moved an application

alleging his innocence, however, for the time being he has not produced any convincing evidence to support his plea of alibi. Though the plea of alibi if taken at the earliest shall not out rightly be rejected, but that varies from case to case and keeping in view the attending circumstances of the present case, determination of the genuineness of the plea of alibi by this court at this stage may cause prejudice to either side, which is not desirable, particularly while hearing post arrest bail petition and hence better be left for the determination of trial court. Reliance in this respect can safely be placed on case titled "Ihsanullah-Vs-State" reported in PLJ 1999 Cr.C (Lahore) 387" [D.B], wherein it was held

that:-

"We refrain from discussing deeper merits of the case including the finding of innocence recorded in favour of the above mentioned accused persons, lest it might cause prejudice to them at the trial. Suffice it to observe that the petitioners' plea of alibi is oral and was supported by some shop-keepers of the Adda who were interrogated by the I.O/DSP in May, 1997, more than one year after the occurrence. It cannot be preferred at this stage over the eye-witness account furnished by Akhtar Ali, complainant, Muhammad Arif, Abdur Rahman and Muhammad Siddiq, who in their statements recorded under Section 161 of the Cr.P.C. fully implicated the petitoenrs

and supported the prosecution story narrated in the FIR. It is true that the plea of alibi can be considered at the bail stage as held in the case of Ch. Muhammad Shafi vs. Ch. Muhammad Anwar Samma and another (1975 SCMR 219) and Muhammad Azam vs. Khalid Javed Gillan etc (1981 SCMR 734). However, weight to be given to the plea of alibi at bail stage depends upon the quality of material brought on the record in each case. If the plea of alibi is promptly raised and is supported by reliable material then it can be safely made basis for grant of bail."

6. In light of the available record, the petitioner is prima facie found connected with the offence, which falls within the prohibitory limb of section 497 Cr.P.C, disentitling him to the grant of bail.

7. For the reasons, mentioned herein above, this bail petition is dismissed.

Announced.

05.9.2023.

Ihsan.*/-


JUDGE.

(D.B)

Hon'ble Mr. Justice Fazal Subhan.



RECEIVED

13 SEP 2023


Khalid Khan