

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

J U D G M E N T

Cr.M/BA. No.178-A/2015
Date of hearing...22.05.2015

Mohsin Javed Vs State.

Petitioner(s) by.....

Respondent(s) by.....

QALANDAR ALI KHAN, J:- This single judgment/order is directed to also dispose of Cr.M/BA. No.248-A/2015 titled Iqbal Khan Vs The State & another and Cr.M/BCA. No. 189-A/2015 titled Talha Khan Vs The State & others, as all the three petitions arise out of the same case vide FIR No. 42 dated 17.01.2015 under sections 302/148/149/109 PPC Police Station Havelian, Abbottabad.

2. The case was registered on the report of Talha Khan, complainant, who reported to the police in RHC Havelian to the effect that he alongwith his father, Iftikhar Ahmad, were proceeding towards 'Jamia-Masjid Hasnain Karimain' for offering 'Fajar' (morning) prayers and

when reached Mohallah Tanoli near the house of Amin at 06:00 AM they saw Iqbal, Matloob and Mukhtar sons of Yaqoob, Basit son of Iqbal, Mohsin son of Javed and Aftab son of Aurangzeb residents of Jadoon Abad armed with deadly weapons who were recognized in the light of mobile phone of his father as well as his own torch, and that on the direction/command of Iqbal, accused/petitioner in Cr.M/BA.No.248-A/2015, the accused/petitioner in the instant bail petition opened fire at his father who was hit on his chest and died on the spot. According to the complainant, his uncle Waqar Ahmad also reached the spot while proceeding for offering prayers and witnessed the occurrence. However, they both escaped unhurt, while all the accused named in the FIR made good their escape from the scene of occurrence. Complainant further stated that inhabitants of the Mohallah were also attracted to the spot on their hue and cry. The motive for the occurrence was cited as civil dispute and criminal cases between them and father of the accused/petitioner in the instant bail petition, namely Javed son of Wilayat Khan, who, allegedly,

instigated the accused for commission of the offence.

3. The local police conducted investigation, and after completion of investigation, has since submitted complete challan in the case. During investigation, the investigating officer (I.O.) got conducted post-mortem examination of deceased Iftikhar Ahmad through the medical officer who found multiple firearm entry wounds on the body of the deceased. The I.O. secured blood stained earth from the place of the deceased shown in the site plan and seven crime empties of 30 bore from the place assigned to accused/petitioner, Mohsin Javed, in the site plan. The I.O. also took into possession a 20 volts Bulb in working condition from the outer wall of Muhammad Amin. Likewise, the mobile phone of the deceased and torch of the complainant were also taken into possession. The blood stained earth secured from the spot by the I.O. and blood stained garments of the deceased were sent to the Forensic Science Laboratory (FSL), wherefrom the result was received in the affirmative. Similarly, three crime bullets in a plastic bottle received by the I.O. from the medical officer

were sent to the firearms expert, and the expert opined that the crime bullets were of 30 bore and were fired from 30 bore pistol. The I.O. also secured cell data of mobile phones recovered from accused/respondents in Cr.M/BCA. No.189-A/2015. The accused/respondents, namely, Matloob Khan, Mukhtiar Ahmad, Basit Khan and Aftab Ahmad have been released on bail by the learned Additional Sessions Judge-VI, Abbottabad vide his order dated 06.03.2015, whereas the accused/petitioners, Mohsin Javed and Iqbal Khan have been declined bail by the Courts below, hence these two separate petitions for their post arrest bail.

4. Arguments of learned counsel for the accused/petitioners, learned Addl: AG and learned counsel for the complainant heard, and record perused.

5. The main thrust of the arguments of learned counsel for the accused/petitioners was that net of the charge was thrown wide open to implicate several male members of the family for the *Qatle-Amad* of deceased Iftikhar Ahmad caused by a single person. The learned counsel urged that the

complainant had stated in his report that the accused were recognized in the light of his torch and mobile phone of his deceased father, without mentioning light from the bulb on the outer wall of nearby house of Amin mentioned in the FIR, which has been taken into possession by the I.O. Moreover, the said Amin and other people residing near the spot and attracted after the occurrence have stated in their statements under section 161 Cr.PC that they found dead body of the deceased lying there and that they informed relatives of the deceased about the occurrence, thereby implying that neither the complainant, nor the eye-witness or any other relative of the deceased was present with the dead body.

6. The learned Addl: AG and learned counsel for the complainant, on the other hand, argued that all the accused were directly charged in the FIR and specific role of effective fire and *Qatl-i-Amd* was attributed to the accused/petitioner, Mohsin Javed, and that of *Lalkara*/command to accused/petitioner, Iqbal. They further contended that the spot shown in the site plan were confirmed through reports of FSL regarding blood stained

earth and blood stained garments and further report of the firearms expert with regard to crime bullets. They maintained that the eye-witness mentioned in the FIR, Waqar Ahmad, had supported the FIR. They concluded that there was strong motive for commission of the offence, and that the deceased had apprehended threats to his life through applications to the police officer in his lifetime.

7. The record reveals that the report was lodged by the complainant in the emergency ward of RHC Havelian, where he had brought the dead body of his father, within 50 minutes of the occurrence, apparently, in a promptly lodged FIR by all standards, wherein the accused/petitioner, Mohsin Javed, has specifically been assigned the role of firing at the deceased and causing his *Qatl-i Amd* on the direction/command of co-accused Iqbal and in the armed presence of rest of the accused. The complainant has shown recognition of the accused in the torch light as well as in the light of the mobile phone of his father, besides the fact that all the accused are co-villagers of the complainant and the parties are locked in civil as well criminal litigation. Besides, the motive emanating from civil

and criminal cases, alleged by the complainant in the FIR, appears augmented by applications dated 29.10.2013, 10.10.2013 & 04.09.2013, moved by the deceased to the local police officers, thereby seeking protection against threats to his life from the accused in the case owing to the stated cases between them. These facts would go a long way to establish a *prima facie* case against accused/petitioner, Mohsin Javed, notwithstanding statements of Muhammad Amin and others recorded after almost 23 days of the occurrence, though not mentioned as eye-witnesses in the FIR, and showing presence of the dead body on the spot when they came out of their nearby houses after the commission of the offence. How for their testimony is going to dislodge the version of the complainant in the FIR and eye-witness account of PW Waqar Ahmad mentioned in the FIR, is yet to be determined during trial, and this is, obviously, not the appropriate stage for deep appreciation of evidence. Likewise, whether the bulb taken into possession by the I.O. from the outer wall of the nearby house of Muhammad Amin was lit at the time of occurrence and as to what would be its

bearing on the case of prosecution, is also something to be determined at the trial stage. In any case, the promptly lodged FIR, direct charge against accused/petitioner, Mohsin Javed, together with medical report, ocular account of the witness mentioned in the FIR and other circumstantial evidence, *prima facie*, connect the accused/petitioner with the commission of the offence. Therefore, the instant bail petition of the accused/petitioner, Mohsin Javed, is dismissed.

8. However, the role assigned to the accused/petitioner, Iqbal Khan in Cr.M No.248-A/2015 is distinguishable, as he has been assigned the role of *Lalkara*/command in the case, requiring further inquiry into his role in the commission of the offence. Therefore, his petition for post bail is accepted, and he is admitted to bail subject to furnishing bail bonds in the sum of Rs.1, 00, 000/- (one lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

9. As regards petition for cancellation of bail granted to accused/respondents, Matloob Ahmad, Mukhtiar Ahmad, Basit Khan and Aftab Ahmad, suffice it to say that they have been shown

present duly armed at the time of occurrence in the FIR, with no role of firing either effectively or ineffectively or doing anything towards the commission of the offence. As to how for their armed presence on the spot at the time of occurrence contributed to the commission of the offence making them liable under section 148/149/109 PPC is, certainly, subject to further inquiry. They were, therefore, rightly extended the concession of post arrest bail by the learned Additional Sessions Judge-VI, Abbottabad vide his impugned order dated 06.03.2015. Additionally, neither there is any allegation in the application for cancellation of bail, nor anything has been brought on record showing misuse of concession of bail by them. Consequently, the petition for cancellation of bail of the accused/respondents is dismissed.

Announced.
Dt. 22.05.2015.

J U D G E

'Ayub'