

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.2456-P/2015

Date of hearing: **22.01.2016.**

Petitioner (s) : Adam Khan by M/S Syed Akbar Ali Shah and
Tafseel Khan Afridi, Advocates.

Respondent (s) : Mr. Mujahid Ali AAG for the State and Syed
Abdul Fayaz, Advocate, for complainant.

ORDER

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner

Adam Khan, seeks bail in case FIR No.438 dated 24.11.2015, registered under sections 302/324/148/149 PPC, in Police Station Matani, Peshawar, wherein he alongwith absconding co-accused is charged for committing the murder of Malang with firearms on 24.11.2015 at 11.00 hours in the graveyard of village Maryam Zai, on a motive of previous blood feud.

2. Arguments heard and record perused.

3. It appears from the material on record that qua the same incident another FIR No.439 dated 24.11.2015 under sections 324/148/149 PPC, has been registered in the same Police Station on the report of injured Wilayat wherein he besides charging other co-accused, has also charged Malang (deceased of the instant case) as accused for attempting at his life and causing him firearm injuries.

Motive of previous blood feud enmity between the parties has been alleged in both the FIRs. When both the FIRs are taken in combination, the date, time and place of occurrence as well as parties are the same, thus, the incident falls within the ambit of cross version. No doubt in the instant case one person has lost his life and in FIR No.439 only complainant Wilayat has sustained firearm injuries, but the prime consideration in cases of cross version, is as to who the aggressor was and who was aggressed upon and not the injuries caused to one side only or that the loss/ damage caused to one party is greater than caused to the other, which is only a relevant factor and does not have overriding effect. In this view of the matter, who has acted in self defence and who has attacked, is a matter of further inquiry which is yet to be determined during trial after recording evidence, on the basis of which the case of the petitioner is arguable for the purpose of bail in light of the dictum laid down by the Hon'ble Supreme Court in cases titled, **“Muhammad Shahzad Siddique Vs the State and another” (PLD 2009 Supreme Court 58), Abdul Hameed Vs Zahid Hussain alias Papu Chaman Patiwala and others” (2011 SCMR 606) “Hamza Ali Hamza and others Vs the State” (2010 SCMR 1219).**

4. Resultantly, this petition is allowed. Accused/ petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

nnounced
03.11.2015

J U D G E

