

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.1915-P/2015

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner

Naseeb Khan, seeks bail in case FIR No.418 dated 02.09.2007, registered under sections 302/324/148/149 PPC, in Police Station Mattani, Peshawar wherein he alongwith co-accused is charged for committing the murder of Shahidullah deceased, with firearm on a motive of previous blood feud. In addition to complainant the incident is stated to have been witnessed by other persons present there.

2. Complainant Zubaid Ullah despite service not in attendance. Perusal of record shows that he also did not turn up before the learned lower court in bail petition of the petitioner, therefore, this petition cannot be kept pending for indefinite period, just to procure the attendance of complainant, who otherwise is not interested to contest the proceedings.

2. Arguments of learned counsel for the petitioner and learned Standing counsel for the State heard. Record perused.

3. It appears from the record that a general role of firing has been attributed to seven accused including the petitioner, while as per autopsy report, the deceased had sustained single firearm injury. The other two injured passersby have not come forward to charge the petitioner for commission of the offence. It is yet to be determined during trial as whose shot out of the seven accused proved fatal and similarly the question of the common object of the co-accused in the commission of offence is yet to be answered by the prosecution during trial. Co-accused Noor Muhammad, whose role is identical to that of the petitioner has already been released on bail by this court vide order dated 09.07.2015 in Cr.Misc.BA No.1137-P/2015, therefore, on the rule of consistency the petitioner is also entitled to concession of bail. Mere abscondence of the petitioner, when otherwise, he is entitled to concession of bail, would not obstruct his way of bail. Guidance in this regard may be derived from case titled, “Qamar alias Mitho Vs the State and others” (PLD 2013 Supreme Court 222).

4. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds to the tune 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.

5. Before parting with the judgment, I would like to refer to the bail refusing order of the learned lower Court dated 14.10.2015, which being suffering from lack of reasons and against the principles governing the grant and refusal of bail, is a non-speaking order. The learned lower court failed to meet the arguments advanced at the bar, particularly, by the learned counsel for the petitioner in respect of release of co-accused on bail by this Court, whose role was identical to that of the petitioner. The learned lower court has not differentiated the role of the petitioner from that of the accused released on bail by this Court. For ready reference, the operative part of order of learned lower court is reproduced below:-

“The tentative assessment of the case record shows that the accused has directly been nominated in the FIR. The offence carrying capital punishment. The medical report also supports the version of prosecution. There is

motive of blood feud enmity between the parties. In view of the above discussion, the accused/petitioner is not held entitled or release on bail, hence bail petition is dismissed”.

The bail granting or refusing order of a court is always required to be based on sound reasons in light of tentative assessment of the record and not to be passed in vacuum. Similarly, the judgments of the superior Courts under the Constitution are binding upon the subordinate Courts in cases having identical facts and circumstances and any deviation therefrom would frustrate the ends of justice. The Additional Registrar (Judicial) of this Court is directed to send copy of this judgment to learned Additional Sessions Judge-II, Peshawar for future guidance, as well as learned Sessions Judge, Peshawar, who shall circulate the same among the Additional Sessions Judges, Posted in Peshawar, with intimation to this Court.

Announced
10.11.2015.

J U D G E