

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.MB. No.380-D/2020

Faheem
Vs.
The State & another.


JUDGMENT

For Petitioner: **Mr. Ahmad Ali Khan, Advocate.**

For State: **Mr. Adnan Ali, Asstt: A.G.**

For Respondent: **Mr. Tanvir Ahmed Baloch,**
Advocate.


Date of hearing: **20.11.2020.**



SAHIBZADA ASADULLAH, J.- Being booked in case FIR No.198 dated 11.6.2020, registered under Section 302/34 PPC at police station Daraban Kalan, accused/petitioner Faheem son of Nizam ud Din has approached this Court for his release on bail, as he was declined bail by the Court of learned Additional Judge Model Criminal Trial Court, D.I.Khan vide order dated 18.9.2020.


2. Brief facts of the case as narrated in the FIR, are that on 11.6.2020 at 13:30 hours, complainant Habib Ullah, made report to the local police of police station Daraban on the spot where dead body of his brother Muhammad Waqar was lying, stating therein that he was present in his house when received

information that on preceding night at about 02:00 hours, his brother Waqar had visited the house of Mst. Uzma Bibi, sister of the accused/petitioner to meet her, as he had friendly terms with said Uzma Bibi; that co-accused Nizam ud Din alongwith the petitioner saw the deceased with Mst. Uzma Bibi in her room and apprehended him, tied his hands, took him to the fields where they committed his murder. On the report of complainant, instant case vide the captioned FIR was registered against the accused.



3. Arguments of learned counsel for the petitioner and the learned State counsel assisted by learned counsel for the complainant heard at length and record perused with their valuable assistance.

4. On scanning the record, it transpires that the occurrence took place on the night of 11.6.2020 at 02:00 hours, whereas the report was lodged on the said date at 13:30 hours. There is inordinate and unexplained delay in lodging the report and the complainant has not disclosed the source of information regarding the occurrence in his report. Undeniably, the occurrence has not been witnessed by anyone. The learned counsel appearing on behalf of the petitioner argued that there is no evidence against the accused/petitioner which could link him with the commission of offence. He stressed that in view of contradiction *inter se* the statements of



Mst. Uzma Bibi, recorded under Section 161 and 164, Cr.P.C, the case of accused/petitioner requires further probe. I have carefully perused the statement of Mst. Uzma Bibi, recorded by the investigating agency under section 161, Cr.P.C. and the statement recorded before Judicial Magistrate PHP/MOD, D.I.Khan and found that in the statement before the police, she charged the accused, whereas in the statement recorded before the Judicial Magistrate, she resiled from her earlier stance by exonerating the accused from the commission of the offence, which makes the case of petitioner that of further inquiry. Moreso, the call data which was necessary evidence in the present has not been placed on the file to show contact between the deceased and Mst. Uzma Bibi, sister of the accused/petitioner, before the occurrence.

5. No doubt, a 30 bore pistol was recovered on pointation of the accused/petitioner which was sent to the Forensic Science Laboratory alongwith the recovered empties while were found to have been fired from the recovered pistol. The learned counsel representing the complainant submitted that the positive report has left no doubt regarding the involvement of petitioner in the episode. This Court is not in agreement with what the learned counsel submitted, as admittedly the recovered pistol is the ownership of the absconding

co-accused who happens to be the father of petitioner and the evidentiary value of this piece of evidence can better be determined in case of the co-accused, who is still at-large and is its owner. Furthermore, the petitioner is of tender age which too tilts the scale in his favour.

6. It is established principle of law that benefit of doubt can even be extended at bail stage. Reliance in this regard can be placed on the case law reported as "Muhammad Faisal Vs. The State and another" (2020 SCMR 971).

7. It is now well settled that an accused cannot be kept in jail as punishment merely on the ground that he is directly charged for an offence falling under the prohibitory clause of section 497 Cr.P.C., because a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on case titled "Zaigham Ashraf Vs the State and others" (2016 SCMR 18), wherein it is held that:

"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner."

8. Tentative assessment of the material available on file suggests that the case of petitioner is arguable for the purpose of bail. Resultantly, this petition is allowed and the petitioner is directed to be released on bail subject to furnishing bail bond in the sum of Rs:2,00,000/- (rupees two lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate. Needless to mention that the observations made above are purely tentative in nature which shall not prejudice the mind of trial Court.

9. Above are detailed reasons of my short order of even date.

Announced.
Dt: 20.11.2020.
Kifayat/PS*


JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah


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