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REGISTERED
No.Crl.A.32/2018 -SCJ
SUPREME COURT OF PAKISTAN
Islamabad, dated 15th January, 2018

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From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
Peshawar High Court,
Peshawar. 40 DR 8

Subject:

CRIMINAL APPEAL NO. 32 OF 2018
OUT OF
CRIMINAL PETITION NO.566 OF 2017
Aziz Ullah s/o Saif Ullah
Versus
The State

Peshawar High Court Peshawar			
Receipt No		1051	
Date:		18/1/18	
1- MIT		6- PSO	
2- Dir (HRC)		7- DBA	
3- Dir (ReG)		8- DIT	
4- Dir (HR.W)		9- AR(J)	
5- DPD		10- AR(G)	

On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 15.05.2017 in Crl.Misc./BA No.706-P 2017 in case FIR No.868 dated 30.08.2009 registered at Police Station City Mardan

Dear Sir,

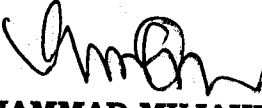
I am directed to enclose herewith a certified copy of the Order of this Court dated **11.01.2018** converting into appeal the above cited Criminal Petition and allowing the same in the terms stated therein for further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Yours faithfully,

Encl:

Order:


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK

MR. JUSTICE SARDAR TARIQ MASOOD

Crl. Petition No. 566 of 2017

(Against the order of the Peshawar High Court, Peshawar dated 15.05.2017 passed in Cr. M/BA No. 706-P of 2017)

Aziz Ullah

... Petitioner(s)

VERSUS

Nawas Khan etc

... Respondent(s)

For the Petitioner(s) : Mr. Muhammad Ilyas Siddiqui, ASC along with petitioner

For Respondent No.1 Nemo

For Respondent No.2 : Mr. Anis Muhammad Shahzad, State Counsel
Momin Khan, ASI/IO

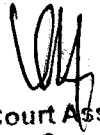
Date of hearing : 11.01.2018

ORDER

MANZOOR AHMAD MALIK, J. - Through this petition, the petitioner has sought cancellation of bail of respondent No.1 granted to him by the learned Peshawar High Court, Peshawar vide order dated 15.05.2017 in case FIR No. 868 dated 30.08.2009, offence under sections 302, 324/34 PPC, registered at P.S. City Mardan.

2. Precise allegation against the respondent No.1, as per FIR, is that on the fateful day and time he while armed with firearm made firing at the complainant and his one relative Sultan, as a result whereof, the fire so shot hit the complainant and


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Islamabad

Sultan, and both of them got injured. Later on Sultan succumbed to injuries.

3. Notice in this case was issued on 31.10.2017, whereafter the case was fixed for arguments on 17.11.2017, when the learned counsel representing the respondent No.1 sought time to further prepare his brief, therefore, adjournment was granted. On 03.01.2018 case was again fixed for hearing when learned counsel for respondent No.1 was available but respondent No.1 was not present and his learned counsel apprised the Court that respondent No.1 had to go to Karachi on account of some bereavement in the family and that he was on his way back. It was requested that the case be adjourned for the next day, therefore, the case was adjourned for 04.01.2018, but the respondent No.1 again absented himself on 04.01.2018, therefore, bailable warrants were issued for procuring his attendance for 09.01.2018. The respondent No.1 did not turn up on 09.01.2018 as well, therefore, this Court was constrained to issue non-bailable warrants of arrest of respondent No.1 for today and the SHO of the concerned police station was directed to execute the warrants and produce respondent No.1 before this Court. Today, despite repeated calls, neither the respondent No.1 nor his learned counsel has appeared. The ASI/IO of Police Station, City Mardan is in attendance and has also submitted a written report to the effect that despite his best efforts, no clue of the respondent No.1 could be traced and that respondent No.1 has switched off his mobile phone and has absconded. Learned counsel for the petitioner-complainant has

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vehemently contended that respondent No.1 is nominated in the FIR with specific role of firing at the complainant and Sultan (deceased); that the offence alleged against respondent No.1 squarely falls within the prohibitory clause of section 497, Code of Criminal Procedure; that earlier after registration of FIR, he remained an absconder for considerable period of time; that the learned High Court enlarged the respondent No.1 on bail without considering the afore-referred facts and that even before this Court, the respondent No.1 has willfully absented himself. The learned State counsel has supported the contentions of learned counsel for the petitioner.

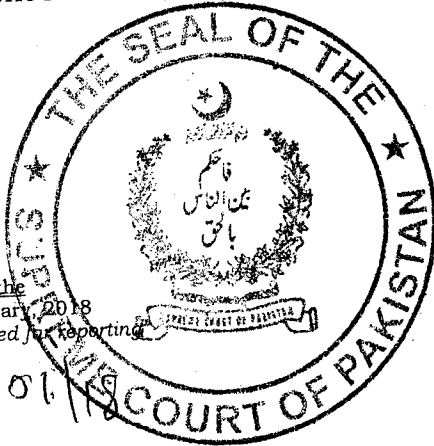
3. Considering the afore-referred circumstances coupled with the fact that respondent No.1 has not appeared before this Court even after assurance given by his learned counsel, despite issuance of non-bailable warrants of arrest issued against him, the report of the police that he has again absconded, that even the learned counsel representing him has also not appeared and the fact that the case against the petitioner squarely falls within the prohibitory clause of section 497, Code of Criminal Procedure, in the circumstances of the case, the respondent No.1 was not entitled to the concession of bail.

4. For the foregoing, this petition is converted into an appeal and the same is allowed. The impugned order of the learned Peshawar High Court, Peshawar dated 15.05.2017 is set aside and the bail granted to respondent No.1 is hereby cancelled. Since respondent No.1 is not present in person, therefore, we direct that

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perpetual non-bailable warrants of arrest be issued against
respondent No.1 for his production before the learned trial Court.




B-V
Islamabad, the
11th of January, 2018
"Not approved for reporting"
K. Anees/-

13/01/18

Sd/- Manzoor Ahmad Malik, J
Sd/- Sardar Tariq Masood, J

Certified to be True Copy


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Islamabad

