

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr MBC No. 416-D of 2015

JUDGMENT

Date of hearing 01.02.2016

Appellant-petitioner Hussaid by

Mr. Bahadar Khan Marwat advocate

Respondent State and another by

Mr. Adnan Ali Assistant A.G for State and Ch: Javed Akhtar for
advocate complainant

MUHAMMAD GHAZANFAR KHAN, J.- Through the instant petition under section 497(5) Cr.P.C, the petitioner Hussaid through his mother Mst. Samreen Bibi seeks cancellation of bail granted to accused/respondent Gul Zaman by learned Additional Sessions Judge-I, D.I.Khan vide order dated 22.12.2015, in case FIR No.175 dated 25.8.2015 registered under sections 302/324/34 PPC at police station Yarik, District D.I.Khan.

2. The prosecution story, in brief, is that on 25.8.2015 at 1230 hours, Rizwanullah complainant reported the matter in the emergency room of civil hospital, D.I.Khan to the effect that on the same date, he was present in his house when got telephonic information that his father has been fired at 1100 hours on Dera-Bannu road by two persons riding on a motorcycle and he

is being taken to Civil Hospital, D.I.Khan. On this information, the complainant reached there and found his father dead and his brother Hussain aged about 5/6 years injured. He charged unknown two persons for commission of offence. However, on 05.9.2015, he recorded his supplementary statement under section 161 Cr.P.C and charged the accused/petitioner and his companion Fatehullah for commission of the offence.

3. The learned counsel for petitioner mainly contended that petitioner was injured in the incident but was not made party in the bail petition, therefore, the bail granting order is against the principles of law as it is mandatory to give notice to aggrieved person. He relied on the case of **Mohammad Shafiq. Vs. Mohammad Mir Khan and 3 others (2004 P.Cr.L.J Peshawar 968).**

4. As against that, the learned counsel for respondent No.2 contended that the petitioner was not charged by name in the initial report but was charged in the supplementary statement of the complainant recorded after 10/11 days of the occurrence; that nothing incriminating was recovered from possession of the petitioner and that the complainant was duly represented by his learned counsel while granting bail to respondent, therefore, the impugned order is based on sound reasons.

5. I have heard the arguments of learned counsel for the parties and have gone through the record.

6. Admittedly, the respondent was not directly charged in the FIR but was subsequently charged by the complainant in his supplementary statement recorded after 10/11 days of the occurrence. The evidentiary value of such statement will be determined at the trial. Neither the respondent has confessed his guilt nor anything incriminating has been recovered from his possession or on his pointation. These factors, on tentative assessment, make the case of respondent arguable for the purpose of bail. The contention of learned counsel for petitioner, that the petitioner being injured/aggrieved person was neither made party in the bail petition nor was given opportunity of being heard, is misconceived. Admittedly, the petitioner is minor brother of complainant and complainant was duly represented by his learned counsel when the bail petition of respondent was being argued. Moreover, the interest of complainant and the petitioner is one and the same as he is alleged to have received injuries in the incident where his father lost his life. Proviso to section 497(1) Cr.P.C envisages that *“a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show*

cause why he should not be so released.” The word “prosecution” includes complainant party because it has no direct interest in the case. The case law relied upon by learned counsel for the petitioner is distinguishable from the facts of the instant case. The basic authority on the point was rendered in the case of **Muhammad Ashraf. Vs. Duarriyaman and another (PLD 1993 Peshawar 151)** wherein it was held that:-

“While relying on these observations, I am not unmindful of the right of an accused person whose case is not covered by the prohibitory clause of section 497 Cr.P.C that he is entitled to bail as of right. What I am emphasizing is that the State and the complainant, particularly under the new dispensation of justice, are certainly entitled to a notice to grant bail to such an accused.”

It has not been held in the above referred ruling that notice to injured is also necessary but the State and complainant have been held entitled to a notice in cases covered by Qisas and Diyat Ordinance, 1991. In the garb of above cited case law, the matters pertaining to bail are being delayed. In the instant case, the State and the complainant were properly given notice and the bail petition was argued on their behalf.

7. For the reasons mentioned above, the instant petition being bereft of any merit and substance is hereby dismissed.

Announced.
Dt:01.02.2016.
Habib/*

JUDGE