

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.307-A/2020

JUDGMENT

Date of hearing.....11-05-2020.....

*Petitioner (s)... (Kaleem Anwar) by Mr. Muneer Hussain
Lughmani, Advocate.....*

*Respondent (s)..... (The State etc) by Sardar Muhammad
Asif, AAG alongwith complainant in
person*

AHMAD ALI, J.- Accused/petitioner, Kaleem Anwar, seeks his post arrest bail in case F.I.R No.208 dated 14.09.2018 under sections 302/324/109/427/417/34 of Pakistan Penal Code, 1860, read with section 15 AA KPK registered at Police Station Beer, Haripur.

2. The allegations against the accused/petitioner are that on 14.09.2016 at ‘*Namashan Wella*’, he alongwith acquitted co-accused committed ‘*Qatl-i-Amd*’ of Ali Asghar and Malik Iftikhar Khan and caused injuries to Maqsood-ur-Rehman and ineffective firing upon the complainant, Hafeez-ur-Rehman.

3. Arguments heard. Record perused.

4. Perusal of record would reveal that accused/petitioner, Kaleem Anwar alongwith co-accused

Naeem Anwar, Waseem Anwar, Faheem Anwar, Nadeem Anwar is directly charged for commission of the offence at the instance of their father, Muhammad Anwar. The role attributed to the present accused/petitioner in the commission of the offence is that of committing murder of Malik Iftikhar Khan. All the co-accused having similar role, particularly, co-accused Naeem Anwar have already been acquitted by the learned trial Court after extending benefit of doubt to them vide judgment dated 16.12.2019. The alleged recovery of 'kalashnikov' from possession of the accused/petitioner after four years would be seen by the learned trial Court after recording evidence. Mere abscondence is no ground to refuse bail to the accused/petitioner, particularly, when it calls for further inquiry. It has been held in the case of '**Ehsan Ullah vs. The State**' (2012 SCMR 1137) that '*It is settled law that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to him as a of right and not by way of grace on concession and in such a case mere absconsion of the relevant accused person may not be sufficient to refuse bail to him.*' This Court considers that accused/petitioner cannot be kept in jail when his role is at par with that of acquitted co-accused and his guilt is to be adjudged by the learned trial Court on the same

evidence on the basis of which co-accused were acquitted. This Court in the case titled 'Naseer Vs. The State and another' (2019 P.Cr.L.J Note 136) has observed as under:-

“Thus in a situation where the acquitted co-accused, namely, Basheer, charged with a similar and identical role in the FIR by the complainant/deceased as that of the accused-petitioner and on the same set of evidence, he was acquitted of the charge in appeal, then such acquittal per se takes the case of the accused/petitioner to one of further enquiry, notwithstanding the fact that he remained absconder for a sufficient long time. It needs no reiteration that if an accused is otherwise held entitled to the concession of bail, then abscondence alone shall not come in his way.”

Thus, in view of the above, since identical role ascribed to accused/petitioner by the complainant, requires 'further inquiry' into his guilt qua commission of the offence, as envisages in subsection 2 of section 497 Cr.P.C, he is entitled to be released on bail in the peculiar facts and circumstances of the case.

5. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case in view of law laid down in (1996 SCMR 1845).

6. For the reasons mentioned above, this bail petition is accepted and accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- (Rupees Two lacs) with two sureties each in the like amount to the satisfaction of *Illaq*/Duty Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

7. Above are the detailed reasons for short order of this Court of even date.

Dt. 11-05-2020.

J U D G E

M.Saleem/*

(SB) Mr. Justice Ahmad Ali