

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.3743-P/2020

Muhammad Hussain son of Zalamir Khan,
r/o Malk Din Khel Bara District Kyber.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Mr. Shabbir Hussain Gigyani, Advocate.</u>
For State :-	<u>Mr. Arshad Ahmad, AAG.</u>
For complainant:-	<u>Mr. Ashfaq Ahmed Daudzai, Advocate.</u>
Date of hearing:	<u>18.01.2021</u>

ORDER

ROOH-UL-AMIN KHAN, J:-Petitioner Muhammad Hussain, seeks post arrest bail in case FIR No.98 dated 28.07.2018, registered under sections 302/324/34 PPC, at Police Station Bara, on medical ground. Petitioner along with co-accused Shaukat Hussain is charged for committing murder of Bakht Jamal deceased and an attempt at the lives of complainant Muhammad Hussain, Shah Wazir and Mst. Meraj Bibi as well as causing firearm injuries to Mst. Meraj Bibi on 28.07.2018 at 0430 hours in the house of complainant, situated in village Nawa Kamar Bara.

2. Arguments of learned counsel for the parties heard and record perused.

3. Since, learned counsel for the petitioner was pressing hard for release of the petitioner on medical ground, therefore, vide order dated 24.12.2020, the Director General Health Services, Peshawar, was directed to constitute a Standing Medical Board for examination of the petitioner for the purpose of determination of his

Laqman

ailment and that whether his treatment can be held in the jail premises or otherwise and to submit report within a fortnight, positively.

4. The Standing Medical Board, after examination of the petitioner, has furnished and submitted the following report:-

"The Standing Medical Board is of the opinion that patient is a known case of diabetes mellitus, hypertension and ischemic heart disease (valvular heart disease) mitral stenosis for which PTMC was done. He is having severe osteoarthritis of both knees, cannot walk without support of walking aid. His ECHO shows RWMA with impaired systolic function. He is also having coronary Obstructive Pulmonary Disease (COPD), history of impaired renal function. He is having multiple health issues of chronic nature and severity. He needs tertiary care hospital facilities for his treatment as he is having multiple disease of severe nature. His treatment may not be possible in jail premises. (emphasis supplied)

5. According to record petitioner is 75 years old and as per opinion of the Standing Medical Board, he is suffering from multiple diseases of severe nature and his treatment inside the jail may not be possible. Proviso 1st to section 497 Cr.P.C. deals with bail to any person under the age of sixteen years or any woman or any sick or infirm person accused, which reads as under:-

"S.497 (1).. Proviso First:- Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail"

Correct criteria for grant of bail to an accused on medical, in a non-bailable offences, has been laid down by the apex Court in case titled, "Mian Manzoor Ahamed Watto Vs the State" (2000 SCMR 107), in these words:-

Lawrence

"Correct criteria for grant of bail to an accused in a non-bailable case on medical ground would be that the sickness or ailment with which the accused is suffering is such that it cannot be properly treated within the jail premises and that some specialized treatment is need and his continued detention in jail is likely to affect his capacity or is hazardous to his life".

Guidance in this regard may also be derived from case titled, **"Haji Mir Aftab Vs the State" (1979 SCMR 320).**

6. As regards gravity of the offence, where the Court is satisfied of the sickness of the accused and such disease cannot be properly treated in custody, then gravity of the disease would outshine the gravity of the offence. The Hon'ble Supreme Court in case titled, **"Peer Mukaram ul Haq Vs National Accountability Bureau (NAB) through Chairman and others (2006 SCMR 1225),** has held that:-

"sick or infirm person may be released on bail even if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or life imprisonment because where a statute itself lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the Court.

In case titled, **"The State Vs Haji Kabeer Khan" (PLD 2005 Supreme Court 364)** it has been held by the apex Court that:

"Courts are not required to qualify or quantify the nature of disease and once a case is made out under the recognized principle laid down by the Supreme Court in this behalf, bail is to be granted on medical ground leaving prosecution at liberty to move the Court for cancellation of bail, if health of accused has improved during pendency of proceedings, because on the ground of sickness or infirmity, on exceptional term, law has offered an opportunity to an accused to enjoy the concession of bail subject to satisfying the Court about the nature of his

Conclusion

ailment as well as on the ground of non-getting of proper treatment in jail, but no sooner the accused has improved his health, the prosecution can come forward with the request for withdrawal of the concession of bail."

7. Deriving guidance and placing reliance on the judgments (supra) of the Hon'ble Supreme Court, I without touching the merits of the case, accept this petition and allow the petitioner bail on the sole medical ground. He shall be released on bail if he furnishes bail bonds in the sum of rupees two lac with two local, reliable and resourceful sureties each in the like amount to the satisfaction of the learned Trial Court.

Announced:

18.01.2021

M.Siraj Afridi PS

Rooh ul Amin Khan
SENIOR PUISNE JUDGE

SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge