

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT
PESHAWAR
(Judicial Department)



Cr.M B.A. No. 2753-P/2017

Jumma Khan & 1 another V/S The State

&

Cr.M B.A. No. 2893-P/2017

Zeeshan V/S The State

CONSOLIDATED JUDGMENT

Date of hearing: **04.01.2018**

Petitioners:- (Jumma Khan, Jamal Khan and Zeeshan) by M/S Faqir Hussain & Muhammad Adil, Advocates.

Respondents:- (The State & 1 another) by Mr. Arshad Ahmad, A.A.G.

MOHAMMAD IBRAHIM KHAN, J.- Jumma

Khan withal his companion Jamal Khan are jointly looking for their post arrest bail being entangled in case FIR No. 1114 dated 04.09.2016 charged under sections 382,412 PPC registered at Police Station Bhana Mari Peshawar. Their earlier petition for the similar relief was declined by the Court of learned Additional Sessions Judge-XV Peshawar vide his order dated 05.12.2017.

ATTESTED
EXAMINED
Peshawar High Court
15 FEB 2018

2. There is another application for the grant of post arrest bail of accused/Petitioner Zeeshan who has also been arrested in this case the particulars whereof are mentioned as above. His petition for the identical relief was conjointly dismissed by the said learned Court on even date. The reasons being advanced for dismissal of the bail petitions of all the above three accused are that "they have been charged for commission of heinous offence. There is recovery of the snatched amount effected from the Kota Rehaishi of the accused/Petitioners on their pointation. They have been duly identified by the complainant in the identification parade conducted at Central Jail Peshawar by the Area Judicial Magistrate. Therefore, prima facie connected with the commission of heinous offence, thus their prayer for the liberty was declined."

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3. According to the report, Muhammad Ishfaq the complainant was present in his shop at around 11:35 hours on 04.9.2016, in the meanwhile two persons entered in his

shop. Both of them pointed their respective pistols towards him. At the same time they broke the drawer and taken out Rs. 15 lacs out of it. They also snatched the mobile Galaxy-II which was in the use of the complainant bearing its sim # 03456884861. After commission of this offence they vamoosed from the venue of crime through motorcycle. The complainant then came out of his shop raised rallying cry. At the base of this complaint, the complainant stated that three persons were slipped away after commission of the offence instead of two persons whose names were not mentioned but if brought before him he would be able to identify them.

4. It was on 15.10.2016 when the complainant Muhammad Ishfaq recorded his statement under section 164 Cr.P.C that after his ^{full} satisfaction he named Noroz, Gulzar and Qaiser to be those persons who had entered in his shop and had snatched Rs. 15 lacs from him along with the mobile Galaxy-II. Copy of the order dated 25.10.2016 passed by the learned

Judicial Magistrate IV Peshawar is available on the record whereby all the three persons named as above by the complainant in his statement recorded u/s 164 Cr.P.C were granted bail.

5. Next off, these accused/Petitioners Jumma Khan, Jamal Khan and Zeeshan were arrested on one and the same date i.e. 07.11.2017. Later their identification parade was conducted and accordingly the complainant of this case duly identified them correctly before the learned Judicial Magistrate IX Peshawar and some recoveries have also been effected as stated to be the snatched amount but of very scrumpy amount.

6. Having heard arguments of learned counsel for these accused/Petitioners and learned A.A.G appearing on behalf of the State, ^{the} record with their valuable assistance gone through. While as per report dated 28.12.2017 of the learned Deputy Registrar (Judicial) of this Court, the complainant/Respondent No. 2 Muhammad Ishfaq despite personal service did

not appear before him and even today he is not before the Court. Therefore this being bail matter cannot be kept pending for an indefinite period as liberty of the accused/Petitioners is at stake, so was taken up for hearing even in absence of the complainant.

7. Learned counsel for the accused/Petitioners Jumma Khan and Jamal Khan referred to 2017 YLR Note 5 (Peshawar D.I. Bench) "Abdul Waheed V/S The State and another". Likewise, learned counsel for the accused/Petitioner Zeeshan relied upon 2017 P Cr.LJ Note 14 (Peshawar) "Nazir Ahmad V/S The State and another", 2015 P Cr.LJ 1538 (Peshawar) "Yaqoob Khan V/S The State", 1997 SCMR 412 "Muhammad Rafique V/S The State" and 1995 SCMR 127 "Muhammad Ahmad and 3 others V/S The State and another" and thereby prayed for the grant of bail in favour of each of the accused/Petitioner. Inversely, learned A.A.G appearing on behalf of the State vehemently opposed the grant of bail as these

accused/Petitioners have been involved in snatching of huge amount of Rs. 15 lacs along with Galaxy-II mobile from the complainant.

8. The version of complainant Muhammad Ishfaq by itself is doubtful that at the time when the amount of Rs. 15 lacs along with mobile were snatched from him two persons had entered in his shop, while he has charged three persons and none by name. Later in his statement recorded u/s 164 Cr.P.C on 15.10.2016 he has named others/persons by the names of Noroz, Gulzar and Qaiser who have already been released on bail. Amongst these accused/Petitioners, Petitioner Jumma Khan is an Afghan National, he has been arrested on the basis of assertions within the meaning of Section 14 (ii) Foreign Act 1946 at Police Station Cantt District Kohat in case FIR No. 584 dated 05.11.2017. Therefore when the complainant has charged the other three persons after his satisfaction then these Petitioners might have been charged at the instance of police when their arrest was effected afterwards the

commission of this occurrence and may be they have been typified before the complainant with the connivance of the police. This case is shrouded in mystery as to who amongst these Petitioners or the persons already named in the statement under section 164 Cr.P.C of the complainant are amongst those persons who had entered in the shop and snatched the amount of Rs. 15 lacs as well as the mobile phone owned by the complainant. Even if there exist a doubt at bail stage the Court can take notice of it and grant bail to the Petitioners whose presence has been made doubtful at the venue of crime by none else but the complainant himself. Reliance is placed on PLD 1996 Supreme Court 241 "Syed Amanullah Shah V/S The State and another. The relevant citation (c) of the *ibid* judgment speaks

of:-

" Whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should

not be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in the jail during the trial."

In search of same analogy reliance can further be placed on 2016 SCMR 18 "Zaigham Ashraf V/S The State and others", wherein it has been held:-

"Care and caution to be exercised by court when granting/refusing bail to an accused. To curtail the liberty of a person was a serious step in law, therefore, the judges should apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively. Such exercise should not be carried out in vacuum or in a flimsy and casual manner as that would defeat the ends of justice because if the accused charged, was ultimately acquitted at the trial then no reparation or compensation could be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject did not provide for such arrangements to repair the loss, caused to an accused person, detained in jail without just cause and reasonable grounds. Extraordinary care and caution should, thus, be

exercised by the judges in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with capital punishment."

9. In view of the above observations which are purely tentative in nature, on acceptance of both these petitions all the three accused/Petitioners are admitted to bail subject to furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

10. These are the reasons of my short orders of even date.

Announced
Dt: 04.01.2018


JUDGE

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 67 of
The Qanun-e-shahadat Order 1988
15 FEB 2018

Office
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