

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr.MBA.No.489-B/2016

Saddique Zaman

Versus

The State and others

JUDGMENT

Date of hearing: **19.01.2017**

Petitioner: (Saddique Zaman) by Syed Fakhruddin Shah Advocate.

Respondents: (State) by Mr. Qudratullah Khan Gandapur, Asstt: A.G. and others by Imran Ali Shah Advocate.

ISHTIAQ IBRAHIM, J.- Petitioner Saddique

Zaman seeks his release on bail in case **FIR No.945**

dated 17.12.2016 registered under Section **324/34**

PPC at Police Station **Ghoriwala, District Bannu.**

Relief of bail was refused to the accused/petitioner

by learned **Additional Sessions Judge-II, Bannu**

vide his order **dated 23.12.2016**, hence, this

petition for the same relief.

2. Briefly stated facts of the case are that on 17.12.2016 at 1445 hours, complainant Ameer Muhammad Khan while in injured condition alongwith his injured brother Taj Ali Khan reported to the local police at Emergency Room of Civil Hospital, Bannu to the effect that he alongwith his brother Taj Ali Khan were riding on motorcycle and when reached at the spot at about 1400 hours, accused Nisar Zaman and Saddique Zaman came on their motorcycle and stopped it near them. They took out their pistols and started firing at them due to which the complainant and his brother Taj Ali Khan got hit and sustained injuries. Motive for the occurrence is stated to be blood feud between the parties.

3. Learned counsel for the petitioner contended that the accused/petitioner is innocent and has been falsely implicated in the present case; that the site plan and medical reports do not support the prosecution story and that the accused/petitioner

being a police constable was present in Police Line-2, Bannu at the time of occurrence, he referred to the statements of Umar Dad Khan S.I, and Sajid Kamal MHC No.6514 in this respect; that though allegedly the three empties were recovered from the spot but were not sent to the F.S.L to ascertain as to whether the same were fired from one or different weapons and that all these factors make the case of the accused/petitioner one of further inquiry entitling him to the concession of bail.

4. Conversely, learned Asstt. A.G for the State assisted by learned counsel for the complainant vehemently resisted the bail application and argued that the accused/petitioner is directly charged in the promptly lodged FIR; that the occurrence has been witnessed by the complainant; that site plan and the medical reports support the version of the complainant and that the plea of alibi of the accused/petitioner is yet to be

proved at the trial and at this stage, he is not entitled to the concession of bail.

5. I have heard learned counsel for the parties as well as learned Asstt: A.G. for the State and scanned the record with their valuable assistance.

6. The occurrence had taken place on 17.12.2016 at about 1400 hours, whereas the report was lodged at 1445 hours. The primary plea of the accused/ petitioner is that he is serving in police department as constable and on 17.12.2016 at relevant time he was present in Police Line-2 Bannu. This is not a hard and fast rule that plea of alibi would not be taken into consideration at the stage of bail, however, circumstances of each and every case are to be looked into. The tests which are required for the genuineness of plea of alibi should be that it has been taken at the earliest, that it appears to be reasonable and there is no question of manipulation for the same. In the present case

the accused/ petitioner was arrested on the very day of the occurrence from Police Line-2, Bannu. His stance was also that he was present in Police Line-2, Bannu and has not participated in the commission of offence. He submitted an application to the police hierarchy, whereby statements of two responsible persons were recorded under Section 164 Cr.PC, one is Umar Dad Khan, S.I, Line Officer, Line-2 FRP, Bannu and the other is Sajid Kamal, MHC No.6514, Line-2 FRP, Bannu. They have confirmed the stance of the petitioner that at the relevant time he was present in Line-2 FRP, Bannu. The question before this Court is whether in such like circumstances where two police officers/officials confirm the presence of the petitioner at the relevant time, the same can be discarded for the purpose of bail just by holding that the plea of alibi is to be determined by the trial Court is not correct. Besides that the plea of alibi of the petitioner has not been rebutted

by the prosecution rather the same has been confirmed by the Investigating Agency by recording the statements of two witnesses who are categoric on the point that at the relevant time the petitioner was present in Line-2 FRP, Bannu. This factor alone makes the case of the accused/petitioner arguable for the purpose of bail being one of further inquiry.

7. In case titled **'Zaigham Sharif Vs. The State and others** (2016 SCMR 18), it is held that:-

“There is no hard and fast rule that plea of alibi shall not be considered at bail stage because while granting or refusing to grant bail to an accused person, the Court is not required to see and consider the materials/evidence, collected in favour of the Prosecution but also to give proper attention to the defence plea, taken by an accused person”.

8. In the case of **“Khalid Javed Gillani Vs. The State”** (PLD 1978 SC 256), broader principles

were laid down with regard to accepting the plea of alibi of accused in that case, making tentative assessment of the materials brought on record and it was held as follows:-

*"S. 497---Bail---Assessment of evidence---Court, in matters of bail, to go by its assessment of the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case--
-Prosecution though may prove a prosecution witness to be man of unimpeachable character for purpose of bail, however, hostile relationship between parties a circumstance not irrelevant to Court's assessment of material produced before it---Petitioner's plea of alibi supported by affidavit of a disinterested person, a medical practitioner of high repute, not having any ostensible connection with petitioner---Bail absence of proof of Doctor's evidence being not fit to be relied upon, held, could not be properly refused---Impugned order being based on misreading of S.497,*

*petitioner ordered to be released
on bail."*

9. Thus taking a tentative assessment of the available material, the case of the accused/petitioner requires further probe into his guilt. Resultantly, this petition is accepted and the accused/petitioner is admitted to bail on furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees one lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

10. Any observations made in the order being tentative in nature should in no way prejudice the proceedings before the learned trial Court.

11. Above are detailed reasons of my short order of the even date.

Announced.
Dt: 19.01.2017.

JUDGE