

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

Cr.M BA No.3663-P/2019

Roidad Khan Vs the State & another

Date of hearing: 02.01.2020

Mr. Muhammad Afaaq Afridi, Advocate, for the
petitioner.

Mr. Umar Farooq, AAG, for the State.

Mr. Alam Khan Adenzai, Advocate, for the
complainant.

JUDGMENT

AHMAD ALI, J. Through the petition in hand, the petitioner, Roidad Khan seeks his post arrest bail in case FIR No. 65 dated 08.10.2019 under sections 302-PPC/15-AA, P.S. Jamrod (District Khyber). Same relief was however declined to him by the leaned trial Court vide order dated 26.11.2019.


2. Brief facts of the case are that the complainant reported the matter to local police in terms that on the eventful day his son left the house for Isha prayer, but did not return home. On 03.10.2019, he was informed that his son is lying dead in the ground of Ghazali Public School, when reached the spot, he found his son murdered with firearm. Initially he charged nobody for the commission of offence, however, later on, the

present accused was charged for the murder of his son, hence the instant petition for bail.

3. Argument of learned counsel for the parties heard and record gone through.

4. Perusal of record reveals that initially nobody was charged for the commission of offence. It so happened, when the complainant recorded his 164 Cr.P.C statement before the learned Judicial Magistrate on 17.10.2019, after a considerable delay and without disclosing his source of information and stated that his son was put to death by the present petitioner.

5. Being an unseen occurrence, there is no direct evidence to prima facie connect the present accused with the commission of offence. Be that as it may, suffice it to say that the evidence regarding last mobile contact in absence of any corroborative evidence is a weak type of evidence, especially when it has not been mentioned in the FIR that at what time deceased was lastly seen in the company of the accused.



6. So far as recovery of weapon of offence and burnt mobile of deceased are concerned, the same were not recovered from the direct possession of the accused, which would also require *pro & contra* evidence during trial. In this regard reliance could be safely placed on case law reported in 2017 SCMR 61, 2014 SCMR 12.

7. In the circumstances, case of accused-petitioner will require further probe to establish his involvement in the commission of offence through reliable evidence as provided under Sub-Section (2) of Section 497 Cr.P.C, where grant of bail is a rule and refusal thereof is an exception. Petitioner is behind the bars since his arrest and is no more required for further investigation.

8. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in 2008 SCMR 807 "Haji Muhammad Nazir Vs State".

9. Before parting with the 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 and; as per law laid down in (1996 SCMR 1845).

10. In view of the above discussion and on tentative assessment of material available on file, a case arguable for the grant of bail is made out. Resultantly, this

petition is allowed and the accused-petitioner, named above, is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- with two sureties, each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

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

Announced:
02.01.2020



J U D G E

Amjad, PS SB

Mr. Justice Ahmad Ali