

**PESHAWAR HIGH COURT, BANNU BENCH**  
(Judicial Department)

**Cr.M.BA. No.360 -B/2020.**

**Noorzali**

**Vs.**

**The State etc.**

**JUDGMENT**

Date of hearing 22.07.2020.

Petitioner by: Mr. Haji Hamayun Khan Wazir advocate.

Respondent by: Muhammad Ashraf Khan Marwat advocate.

State by : Mr. Qudratullah Khan Gandapur Asstt: A.G

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**SAHIBZADA ASADULLAH, J.-** After having been booked

in case F.I.R No. 74 dated 16.05.2020 under sections 302/324/34

P.P.C. the petitioner after his arrest applied for bail before the

Court of Additional Sessions Judge-IV, Lakki Marwat, which was

declined vide order dated 09.07.2020. Feeling aggrieved the

petitioner preferred this petition for his release on bail.

2. Brief facts of the case are that the complainant in injured condition alongwith the dead-body of the deceased Shahidullah came to the Police Station and reported the matter, that it was at Qaza Vela, when the deceased Shahidullah received firearm injury and he was taken for treatment to Civil Hospital

Tajori and it was after the injured got treatment that they left for their home in a motorcar and got down from the same near the *baitak* of one Khushdil, wherefrom they proceeded on foot towards their home, it was at 01.00 a.m (mid night) when they reached near the house of Mir Hakim, accused Noorzali Khan, Khan Wali sons of Muhammad Khan and Sabz Ali Son of Khan Wali were seen duly armed with Kalashnikovs, while crossing accused Sabz Ali all the three fired at them with their respective weapons, which resulted into injuries on his as well as on the person of deceased Shahidullah, they fell to the ground. After a while Shahidullah succumbed to the injuries, whereas the accused decamped from the spot. The motive was stated to be landed property dispute.

3. The learned counsel for the parties alongwith Asst: Advocate General were heard at length and with their valuable assistance, the record was gone through.

4. The record reveals that as per statement of the complainant the incident occurred at 01.00 a.m (mid night) when he alongwith the deceased were coming from the hospital after getting treatment and in that respect case F.I.R No. 73 dated 15.05.2020 under section 324/34 P.P.C against Noorzali Khan, Khan Wali sons

of Muhammad Khan was registered, with the time of occurrence mentioned as 18.00 hours. It is pertinent to mention that on the same day i.e. 15.05.2020 at 20.30 hours the petitioner Noorzali received injuries for which Ghani Gul son of Zafar Khan, Zahidullah son of Mohibullah were charged, in which respect case F.I.R No. 75, dated 16.05.2020 under section 324/34 P.P.C was registered, where the report was made at 04.15 a.m, on 16.05.2020 in the emergency ward of civil hospital Naurang by the petitioner Noorzali. There is no denial to the fact that the incident occurred at 01.00 a.m (mid night) and the complainant did not mention the source of identification, rather it was after some days of the occurrence that the Investigating Officer recorded his 161 Cr.P.C statement where he introduced the torch as a source of identification. The complainant was examined by the doctor at 01.30 a.m. and prepared his medico-legal report and also on examination found his blood pressure normal, but surprisingly, the F.I.R was registered at 04.00 a.m. when the complainant alongwith the deceased reached to the Police Station which is lying opposite to the hospital across the road. This is surprising that despite the fact he was oriented in time and space the police present in the Emergency Room of the hospital did not pen down the report as in every civil hospital reporting centers are

provided and even no police official from the Police Station visited the hospital to record the statement of the complainant. This is again surprising that how and wherefrom both the injured and the deceased were brought to the Police Station when the complainant was already hospitalized, these are the elements which can better be determined by the trial Court after recording pro and contra evidence, however, it tilts the balance in favour of the accused at this stage. True that while hearing bail application tentative assessment is to be made and deeper appreciation is not warranted, but equally true that bail applications cannot be heard and decided in vacuum rather the Court which is seized of a bail matter can take into consideration the available material before it. As is held in case titled

**"Zaigham Ashraf Vs the State and others' (2016 SCMR 18).**

**"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an**

accused person, detaining him in Jail without just cause and reasonable ground.”

5. It is yet to be determined as to whether the complainant could identify the accused and as to whether the later introduction of the torch light could help the prosecution in identity of the assailants, is a factor which makes the case of the petitioner that of further inquiry. The matter was reported with a delay of 3 and half hours in the Police Station which could not be explained, whereas the injured/ complainant was examined at 01.30 a.m. in the hospital just across the road. The cumulative effect of what is stated above takes nowhere but to hold that the petitioner has been succeeded in making out a case for bail as one of further inquiry, resultantly, this bail petition is allowed and the accused/ petitioner is admitted to bail, subject to furnishing bail bonds amounting to Rs. 200000/-(two lac) with two sureties each in the like amount to the satisfaction of Illaqa Judicial Magistrate/ MOD concerned.

6. These are the detailed reasons for my short order of the even date.

Announced  
22.07.2020  
\*Azam/P.S\*

(S.B) Mr. Justice Sahibzada Asadullah



JUDGE

SCANNED

24 JUL 2020  
Khalid Khan