

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

Cr. Misc: B.A No. 373-/2023.

**Arif Ali
Vs
The State and another.**

JUDGMENT

Date of hearing _____ 07.9.2023 _____.

For petitioner:- Mr. Muhammad Ashraf Khan Marwat,
Advocate.
For State:- Mr. Hafiz Muhammad Hanif, AAG.
For respondents:- Mr. Muhammad Fakht-e-Alam Jaghra,
Advocate through video link.

FAZAL SUBHAN, J.- Instant is post arrest bail application of petitioner Arif Ali son of Zard Ali, charged and arrested in case FIR No.251 dated 20.7.2022 registered under sections 302/324/34 PPC of Police Station Pezu, District Lakki Marwat.

2. Contents of FIR reveals that Ameen Jan son of Sher Muhammad, on 20.7.2022, while present with the dead body of his son Irfan Ullah aged about 24/25 years and injured Asad Hameed, grandson of the complainant aged about 14/15 years, reported the matter to the local police at

the spot of occurrence that on the relevant day he along with his son and grandson, named above, were proceeding towards their house situated at Warghar Pezu and at about 07:55 a.m. when they reached near Iqra Public School, accused Akhtar Ali and Arif Ali sons of Zard Ali, resident of Wanda Kali District D.I.Khan, came on motorcycle from opposite side and blocked their path, drew their pistols and both the accused started firing upon them with the intention to cause death and as a result of their firing his son Irfan Ullah and grandson Asad Hameed were hit and they fell from the motorcycle, however, he escaped unhurt, whereas in the meanwhile the accused decamped from the spot. He attended his injured son but found him dead. He, therefore, charged the accused named above for the murder of his son and causing injury to Asad Hameed and ineffective firing upon him. Motive for the occurrence was stated that his son Irfan Ullah had abducted the wife of Arif Ali.

3. With this background of the case arguments of learned counsel for the parties and that of learned AAG for the State heard and record perused.

4. Learned counsel for petitioner in his arguments submitted that criminal cases are always based on direct as well as circumstantial evidence and when direct evidence is

available then normally the circumstantial evidence is not taken into consideration or not given much weightage. He contended that trial of the petitioner has already commenced and vide order sheet No.14 dated 21.6.2023, the prosecution has abandoned injured PW Asad Hameed. That said Asad Hameed was a star witness of the prosecution and by abandoning him prosecution has given up the most important witness available to them in the trial, hence in the absence of such evidence there is no likelihood of conviction of the petitioner, especially when no plausible reason for abandoning the said witness has been advanced. He contended that after the alleged occurrence the complainant has not made any efforts to shift the dead body as well as injured to the hospital and the report was made at the spot of occurrence, wherefrom it can be inferred that the complainant was not at all present at the relevant time of occurrence otherwise he may have made efforts to shift the deceased and injured to the police station or hospital. It was further submitted that despite submission of challan in the case on 04.01.2023 the prosecution has failed to examine any witness in the case. It was further argued that 4 empties were recovered from point 'C' of the site plan and were subsequently sent to the FSL authorities and vide opinion of

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the expert the 4 empties were fired from one and the same weapon. In respect of the time of occurrence the learned counsel for petitioner submitted that the medical evidence does not support the time of occurrence mentioned in the FIR and in the post mortem report the medical officer opined that the time between death and post mortem was about 2 hours and 30 minutes which does not coincide with the time of occurrence reported in the FIR. He, therefore, submitted that all these facts are sufficient to make the case of the petitioner one of further inquiry into his guilt and, therefore, he is entitled for grant of bail in the case.

5. Conversely, learned counsel for complainant submitted that the occurrence has taken place at 07:55 hours and report was lodged on the spot at 08:15 hours, hence it is a promptly lodged FIR which dislodge any presumption of deliberation and consultation on the part of complainant. Contented further that at bail stage tentative assessment of the record is to be made and deeper appreciation is to be avoided lest it may prejudice the case of either party. According to him the petitioner is directly charged in the FIR and the motive for the occurrence shows that he had sufficient reason to commit the offence. He further submitted that the deceased has received 3 fire arm injures while the

injured was hit with a single fire arm injury, hence it supports the prosecution case, because 4 empties were recovered from the spot. That as per FIR, age of the injured Asad Hameed is 13/14 years and due to tender age he was abandoned by the prosecution, however, it does not give any premium to the petitioner because the complainant of the case is yet to depose against the petitioner. He, therefore, submitted that in light of the available material on record the petitioner is not entitled for the grant of bail.

6. After hearing the above arguments and tentative assessment of record it is evident that the petitioner is directly charged in a promptly lodged FIR for the murder of deceased Irfan Ullah and causing injury to one Asad Hameed, grandson of the complainant. The prosecution story is supported by recovery of blood from the spot of deceased and 4 empties of 30 bore and recovery of blood stained garments of the deceased and injured. The medical evidence also lends support to the prosecution version. After the occurrence the petitioner remained fugitive from law for about 3 months which provide another circumstance connecting him with the crime.

7. So far as the question of abandoning PW Asad Hameed is concerned, in my view, it does not provide a

sufficient reason or legal justification, for grant of bail especially when sufficient material already discussed above is available against the petitioner and at the same time complainant of the case is yet to record his statement against the petitioner. It is well settled that it is the quality and not the quantity of evidence, to determine the fate of an accused and conviction can be based on the evidence of solitary witness if the same rang true and appeal to prudent mind, but mere abandonment of a witness during trial does not provide any ground for grant of bail. At the most if the petitioner consider it a plausible reason then he can move an application under section 265-K Cr.P.C which of course would be considered and decided by the learned trial Court on its own merits.

8.

For the time being the petitioner is prima facie connected with an offence which falls within the prohibitory clause of section 497 Cr.P.C and, therefore, he is not found entitled for grant of bail. Resultantly, this petition is dismissed.

9. Before parting this order, it is to be mentioned that the observations recorded for deciding this bail application shall be considered as tentative in nature and shall not influence the mind of the trial Court who shall

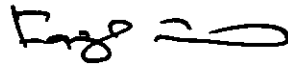
apply its independent mind and make deeper assessment of the evidence brought before it during trial. In support of the above reliance can safely be placed on the judgment of case titled "Shoaib Mehmood Butt-Vs-Iftikhar-ul-Haq and 3 others" reported in (1996 SCMR 1845), wherein it has been held that:-

"That trial Court has to analyse the legal worth of material to be produced by the parties including affidavits and during hearing of bail application, the Court can make tentative assessment of material which is different from and not at equal footing with the appraisalment of evidence, which is within the ambit of jurisdiction of the trial Court."

Announced.

07.9.2023.

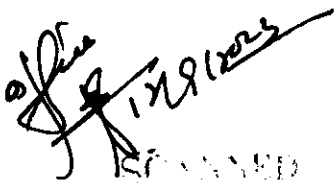
Ihsan.*/-



JUDGE.

(S.B)

Hon'ble Mr. Justice Fazal Subhan.



12 SEP 2023

