

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M/Bail No.299-A/2020.

JUDGMENT

Date of hearing: 27/04/2020

*Petitioner (Muhammad Idrees) By Mr. Waqar Ahmed
Khan, Advocate.*

State by: Sardar Muhammad Asif, AAG.

Complainant by: Mr. Sardar Waqar-ul-Mulk, Advocate.

AHMAD ALI, J:- Petitioner Muhammad Idrees seeks his release on bail in case FIR No. 233 dated 15.03.2020 under Section 324/34 PPC of Police station Shinkiari, Mansehra.

2. Brief facts of the case are that the complainant Muhammad Saeed reported the matter to the local police in Emergency Ward of KATH, that he was present in Jabori Bazaar for purchasing groceries. At 11:30 hours, he was present near Basheer Hotel jabori when Idress, AbdurRehman and Muhammad Riaz, armed with pistols came and Idrees started firing at the complainant as a result of which complainant sustained injuries on his left leg. Naveed Ahmed S/o

Ghulam Mustafa tried to rescue the complainant, who was also fired at by the accused as a result of which he sustained injury on his hand. Motive for the occurrence was a family dispute.

3. Arguments of learned counsel for the parties were heard at length and record gone through.

4. According to the complainant, the accused/petitioner fired at him with his pistol. As per site plan, the complainant was at the mercy of the accused/petitioner, however, he fired at non-vital part of body of the complainant and as such the question as to whether the accused/petitioner had intention and attempted to commit *Qatl-e-Amd* of the complainant and applicability of Section 324 PPC requires further probe. August apex court in the case of “*Umar Hayat Versus the State and others (2008 SCMR 1621)*” granted bail to the accused person where the complainant had received fire arm injuries on non-vital part of the body.

5. The complainant though alleged in the FIR that the occurrence was witnessed by the eyewitnesses present at the spot, however, no statement of any eyewitness has been recorded.

Accused/petitioner as per available record is neither a previous convict nor hardened or disparate criminal. Similarly, there is no allegation that the offence was committed in the name or on the pretext of honour, as such the question as to whether the punishment of Ta'azir could be passed against him or not, keeping in view the provisions of Section 337 N(2) PPC, makes the case of accused/petitioner one of further inquiry. Thus taking guidance from the judgment of apex Court in the case of "*Abdul Wahab & others Vs. The state (2019 SCMR 516)*" a case for grant of bail is made out.

6. Even otherwise, 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. Wisdom can safely be derived from case law reported in *2016 SCMR 18*.

7. Moreso, it has also 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”*.

8. The accused-petitioner is no more required for the purpose of investigation. Besides, there is nothing on record regarding his previous involvement in such like criminal activities.

9. Before parting with the judgment, this Court deems it necessary that the observations rendered by the High Court while disposing bail applications are not to be considered during the trial of the accused. In this regard the august Supreme

Court of Pakistan in *ShuaibMehmood Butt Vs. IftekhharulHaq (1996 SCMR 1845)* has rendered clear guidance, which is to the effect that:-

“However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course, needless to say, is the function of the trial Court”.

10. For what has been discussed above, the petition in hand stands accepted. Petitioner is directed to be released on 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. Sureties must be local, reliable and men of means.

Announced.
Dt.27.04.2020.

J U D G E

Tufail/*

Hon'ble Justice Ahmad Ali.