

PLJ

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr. No. 398-A of 2015

JUDGMENT

Date of hearing ..... 27/09/2015 .....

Petitioner (Ahsan Bashir) by Qazi Shams ud Din,  
Advocate .....

Respondent (The State) by M/S Raja Muhammad Zubair, Asstt. AG  
and Fazal-i-Haq Abbasi, Advocate .....

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QALANDAR ALI KHAN, J:- Ahsan Bashir,

accused/petitioner, has moved this application

for post arrest bail in case vide FIR No.337

dated 04.05.2013 under Sections

302/324/148/149 PPC PS Mir Pur,

Abbottabad, on merit as well as being juvenile.

The FIR was lodged on the report of

complainant/respondent No.2, Jawad Ahmad,

who lodged the report in Ayub Teaching

Hospital, Abbottabad, at 18.10 hours regarding

the occurrence which, according to the

complainant, took place at Deegar Waila on the

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same day i.e. 04.05.2013, by narrating the facts, as quarrel of Nazir and Hanif etc with their maid-servant namely Mst. Pervezan, which attracted him, his mother Akleema Bibi and brother Khayyam and when they went on the roof-top of their house, the said Nazir and Hanif sons of Faqir, the accused/petitioner, Maroof son of Noor Hussain, Mst. Jabeen Kosar wife of Hanif, Mst. Mubarak Jan wife of Faqir and Mst. Zubaida wife of Nazir came on the roof-top of their house. Nazir, Hanif, accused/petitioner and Maroof, who were armed with firearms, started firing at them, resulting in firearm injury on the chest of Khayyam and firearm injuries on the shoulder and neck of his mother, who both succumbed to their injuries; while he was also hit with the stone blow at his right hand by accused Maroof; and they also caused injuries to his other brother namely Mohsin aged about 28/30 years, on the path in the front of the gate where the occurrence took place. The

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complainant mentioned the names of Sardar Waqas Ahmad son of Muhammad Ashraf and Khawar Shahzad son of Shoukat as eyewitnesses alongwith his brother and cited a lingering dispute over a woman of the family.

2. During investigation, the dead bodies of deceased Khayyam and Akleema Bibi were subjected to autopsy, and postmortem report showed two firearm entry wounds of 1-2 cm on the back side of Khayyam deceased with corresponding exit wounds on front side of his body; and, likewise, six firearm entry wounds of the same size i.e. 1-2 cm with corresponding exit wounds on the head and neck of deceased Akleema Bibi. The complainant and his injured brother namely Mohsin were also got medically examined, and their medical reports were also made available on the case file. During spot inspection by the I.O, blood was secured through cotton from the places assigned to both the deceased in the site

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plan, and the I.O also recovered four pellets, three stones and three empty shells of 12 bore, giving smell of fresh discharge, from the roof top of accused Nazir. The report of the Chemical Examiner in respect of the blood on the cotton and blood stained garments of the deceased and injured Mohsin was received in the affirmative. Likewise, report of the Firearms Expert with regard to four crime pellets showed the same to be contents of 12 bore cartridge, and later on the 12 bore crime empties were found to have been fired from the 12 bore SBBL shotgun, one of them handed over by accused Hanif Muhammad during his house search and the other also handed over by the accused/petitioner when he led the I.O to his residence, after his arrest on 31.10.2013. The accused/petitioner alongwith other co-accused made good his escape from the spot after the occurrence, and remained at large till his arrest in the case on 10.10.2013.

Meanwhile, the accused/petitioner was proceeded against under sections 204 and 87 Cr.P.C. and challan was submitted against him under section 512 Cr.P.C. The ad-interim pre-arrest bail of the accused/petitioner was cancelled/ recalled on 28.10.2013, whereafter supplementary challan was submitted against him, and he was jointly charged in the case alongwith other co-accused by the learned trial Court / Additional Sessions Judge-VII, Abbottabad on 03.01.2014. In pursuance of report of Standing Medical Board, showing the age of accused/petitioner as 19-20 years, thus less than 18 years at the time of occurrence, the police / prosecution was directed to submit challan against him under Juvenile Justice System Ordinance.

3. Arguments of learned counsel for the accused/petitioner, learned Assistant Advocate General assisted by the learned counsel for the

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complainant/respondent No.2 heard, and record perused.

4. Qazi Shams-ud-Din, Advocate, learned counsel for the accused/petitioner, vehemently argued that while allegedly present at a lower level than the deceased at a distance of 42 'feet' (presumed 'feet' as neither 'feet' nor 'yard' recorded in the site plan), pellets of 12 bore shotgun could not be imagined to have caused 1-2 cm injuries on the deceased, that too, with corresponding exit wounds on hard parts of the body. The learned counsel pointed out that report about the occurrence, which allegedly took place at *Deegar Waila*, was lodged with considerable delay at 18.10 hours. The learned counsel also pointed out that statements of the two eyewitnesses mentioned in the FIR namely Khawar Shahzad and Sardar Waqas Ahmad were recorded twice by the I.O with different versions given by the said two so-called eyewitnesses in their statements on two

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different occasions. In support of his arguments, particularly age of the accused / petitioner, the learned counsel for the accused/petitioner placed reliance on judgments reported as 2009 P.Cr.L.J 47, PLD 2009 Lahore 535, 1970 SCMR 30, 2008 YLR 1751 and PLD 2003 Karachi 60.

5. During his arguments, learned counsel for the complainant/respondent No.2, Mr. Fazal-i-Haq Abbasi, was particularly critical about the conduct of the accused/ petitioner by pointing out that after remaining fugitive from law for more than five months, the only object of the accused/petitioner has been to delay trial by frequently moving successive applications and taking inconsistent pleas, as in his initial application for bail alongwith other co-accused, he simply mentioned that he was a college student and sending him to jail would damage his educational career, which proved otherwise when he secured even better position when he

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appeared in the examination from jail. The learned counsel also pointed out that the plea of a juvenile offender was intentionally not raised in the initial bail petition so as to prolong the agony of the complainant party by delaying trial. The learned counsel placed on record Detailed Marks Certificate of Class-X of the accused/petitioner showing his date of birth as 8<sup>th</sup> February, 1995, which showed him of more than 18 years of age at the time of occurrence.

According to the learned counsel, the subsequent attempts on the part of the accused/petitioner to show his age less than 18 years at the time of occurrence were made with the twin objects of delaying trial on the one hand and securing bail under the Juvenile Justice System Ordinance through misrepresentation on the other. The learned counsel maintained that direct charge in the FIR, P.M and medico-legal reports, recovery of pellets, crime empties and weapon of offence



i.e. 12 bore shot gun from the accused/petitioner, his absconsion for considerable time and statements of the eyewitnesses would go a long way to connect the accused/petitioner with the commission of the offences which claimed two lives and caused injuries to two others, disentitling the accused/petitioner to the concession of bail in the light of judgments reported as 2013 P.Cr.L.J 1105, 2002 SCMR 1842, 2013 P.Cr.L.J 675, 2012 SCMR 556, PLD 1994 SC 65, PLD 2006 Peshawar 5, 2015 P.Cr.L.J 1321, PLD 2014 Peshawar 127, 2002 SCMR 1836 and 2007 P.Cr.L.J 1004.

6. Apart from material available on record, prima facie, connecting the accused/petitioner with the commission of the offence, such as his direct charge in the FIR for an offence falling in the prohibitory clause of section 497 Cr.P.C, supported by medical/PM report, recoveries made from the spot and recovery of so called

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weapon of offence from the accused-petitioner, positive reports of Chemical Examiner and Firearms Expert, his absconsion for considerable period and, above all, his conduct of changing his stance before the Courts with regard to his age, the commencement of trial in the case, but delayed due to incessant applications of the accused/petitioner, should nevertheless serve as restraining factor, lest discussion on merits of the case tend to prejudice case of either of the parties.

7. Besides, the accused/petitioner had earlier approached this Court for post arrest bail on almost the same grounds, which was dismissed as withdrawn vide order/judgment dated 02.03.2015, but only after the following observations were made by the Hon'ble Judge:-

***"True that while interpreting criminal statutes, every endeavour is to be made to resolve discretionary power in favour of accused. But it is equally important that such interpretation should not***

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*be blown out of proportion culminating into startling consequences of anarchy and chaos confronting the country due to lawlessness. Such exercise cannot be undertaken, in disregard of very object of putting in place the penal laws, lest it may defeat their purpose."*

8. Needless to say that the questions raised during arguments by the learned counsel for the accused/petitioner with regard to certain facts relate to deep appreciation of evidence and merits of the case which are, admittedly, not warranted at the bail stage; while, on the other hand, tentative assessment of the material on record tilt the case towards refusal of bail to the accused/petitioner at this stage when trial has already commenced, but so far delayed only due to successive applications for bail moved by the accused/petitioner and other co-accused. Therefore, while declining bail to the accused/petitioner, the application for his post arrest bail is dismissed, with direction to

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the learned trial Court to strive for expeditious disposal of the case by discouraging unnecessary adjournments and attempts on the part of either of the parties to cause delay in conclusion of trial.

Announced  
Dt. 21.09.2015

/\*M.S.Awan\*/

SO. QALANDER ALI KHAN  
JUDGE

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Subordinate Bench

Subordinate Bench

Subordinate Bench