

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr.Misc:/B.A No.344 -B of 2017

Fawad
Vs
The State & another.

JUDGMENT

Date of hearing _____ 26.09.2017 _____.

Appellant-Petitioner: **By Mr. Syed Fakhr-u-Din**
Shah, Advocate.

Respondent: **By Mr. Salim Awan Advocate.**
State By Shahid Hameed Qureshi,
Addl. AG.

ABDUL SHAKOOR, J--- Accused/ petitioner namely

Fawad Khan involved in case F.I.R No. 603 dated
23.08.2017 under sections 324/34 P.P.C, Police Station
Saddar, district Bannu, after being refused concession of
bail by the learned Additional Sessions Judge-II, Bannu
has come to this court for the same relief.

2. Succinct facts as set out in the first information report, referred above are that complainant Jamshaid Khan in injured condition on 23.08.2017 at 18.10 hours in emergency room of Civil Hospital, Bannu reported the matter to the effect that on the eventful day he after offering his Asar prayers, when came out from the mosque, he saw accused/ petitioner Fawad Khan alongwith other accused namely Wafid Khan, duly armed with Kalashnikovs. Both the accused on seeing started firing at him with the intention to commit his qatl-e-amd, as a result of which he was hit and fell down. The accused after commission of offence decamped from the spot. Motive for the offence alleged by the complainant was verbal altercation between the accused and his cousins some time prior to the occurrence.

3. I have heard arguments of learned counsel for the petitioner and learned A.A.G representing the state assisted by learned counsel for respondent/

complainant and perused the record with their valuable assistance.

4. Perusal of the material available on record reveals that it is day light occurrence, both the parties are resident of the same village and very much known to each other, hence, there is no question of misidentification. Further, the complainant has charged the accused/ petitioner and co-accused by name in the promptly lodged report.

5. The accused/petitioner has been assigned effective role of firing, which resulted into causing injuries on abdomen of the complainant, which is vital part of the body. As per medico legal report the complainant Jamshaid Khan received one entry wound in abdomen above umbilical region without any exit and other one firearm entry wound on the right leg above knee joint, but with no exit. Four small entry wounds on left thigh. One small entry wound on left forearm. Such

multiple entry wounds support the version of complainant.

6. More so, two crime empties also recovered from the spot by the investigating officer. When all these pieces of evidence taken into juxtaposition a prima facie case is made out, connecting the accused/petitioner for commission of offence, which falls within the prohibitory clause of section 497 (1) Cr.PC.

7. So far as arguments of learned counsel for the accused/petitioner that he is juvenile and under section 10 of the Juvenile Justice System Ordinance, deserves to be released on bail. Section 10 of the Juvenile Justice System ordinance, provides that:

“10. Arrest and bail.-(1) Where a child is arrested for commission of an offence, the officer incharge of the police station in which the child is detained shall, as soon as may be, inform-

- (a) The guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the juvenile Court before which the child shall be produced; and

- (b) The concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.

(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the juvenile Court.

(3) Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.

(4) The juvenile Court shall, in a case where a child is not granted bail under subsection (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile Court may immediately release the child on bail.

(5) Where a child under the age of fifteen years is arrested or detained for an offence, which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.

(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.

(7) Notwithstanding anything contained in the Code and except where a juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail,-

- (a) If, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;
- (b) If, being accused of any" offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or
- (c) Who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:
Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if

there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.”

8. Petitioner Fawad Khan, via card of arrest has been shown to be the age of 15/16 years. In this respect Secondary School Certificate of the accused/ petitioner produced, according to which his date of birth is 15.03.2000, whereas the alleged occurrence took place on 23.08.2017, if his age is counted from the date of birth till date of occurrence, it came out 17 years 5 months and 8 days. Section 10 of the Juvenile Justice System Ordinance, has provided some concession for the accused, who are under the age of 15 years, but there is a proviso under section 10 (7) of the Juvenile Justice System Ordinance, according to which, if they are involved in a case of heinous nature, then they may not be released on bail. While the age of accused/ petitioner

is above 15 years, according to SSC certificate. The person who is charged for a crime of heinous nature cannot claim any premium, on the basis of his minor age, because mere minority per-se, is no ground for grant of bail. Section 10 of the ibid Ordinance, does not give the concession of bail to a juvenile accused in an offence falling within the Prohibitory Clause of section 497 Cr.P.C., nor the tender age, can be used as a license by a juvenile to kill or attempt to kill, the innocent people. In genuine cases, it may be invoked in favour of the accused to get him released on bail, but it is noticed that this concession is being misused in the society by the youngsters. So, to curb the menace of rampant crimes, by the youngsters, it is in the interest of society, not to allow them bail on such technical grounds to discourage them in commission of crimes for their better future. No doubt some concession could be extended to the juveniles during trial, but not at bail stage. In this respect reliance can be placed on case titled

**“Farmanullah and another Vs the State and another
(2005 P.Cr.L.J 1500).**

9. Accused/ petitioner is not said to be not aware as single injury from the firearm weapon particularly of Kalashnikov would cause death of injured. The firing by some person with Kalashnikov sufficiently reflects his intention to kill the other.

10. For what has been discussed above, the accused/ petitioner is not entitled for the concession of bail, hence, this bail petition stands dismissed. However, the accused being juvenile, the prosecution is directed to submit challan within a fortnight, while the learned trial court shall conclude the trial within specific period as provided under the National Judicial Policy.

Announced.

25.09.2017

Azam/P.S

(ABDUL SHAKOOR)
J U D G E