

**Judgment Sheet**

**PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
(Judicial Department)

**Cr.MB. No.283-D/2020.**

Fateh Khan  
Vs.  
The State, etc.

**JUDGMENT**

For Petitioner: **Mr. Farooq Akhtar, Advocate.**  
For State: **Mr. Adnan Ali, Asstt: A.G.**  
For Respondent: **Mr. Umar Farooq Betani, Advocate.**  
Date of hearing: **07.8.2020.**

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**SAHIBZADA ASADULLAH, J.-** Being booked in case FIR No.178 dated 07.7.2020, registered under Section 324/34 PPC at police station Mullazai, District Tank, accused/petitioner Fateh Khan has approached this Court for his release on bail, as he was declined bail by the Court of learned Additional Sessions Judge-I, Tank vide order dated 29.7.2020.

2. The story of the prosecution as disclosed in the first information report (F.I.R.), in brief, is that on 07.7.2020 at 0910 hours, complainant Janat Meer, in injured condition alongwith his injured brother Noor Ullah, made report in the Civil Hospital Tank to the effect that on the eventful day, at about 0730 hours (morning), he alongwith his brother Noor Ullah reached to their lands known as Toti Wala for labour work, their

cousins accused Fateh Khan and Madday Khan while standing inside the bulwark (*Morcha/Burj*) situated on rooftop of the *Kotha*, raised slogan to stop and opened firing at them with their respective weapons, resultantly, the complainant and his brother got hit and fell to the ground, whereas his brother Rehmat Ullah, fortunately escaped unhurt. The accused decamped from the spot after commission of the offence. Besides the complainant and injured PW Noor Ullah, the occurrence is stated to be witnessed by his brother Rehmat Ullah. Motive for the offence is stated to be a dispute over land. He charged the accused for commission of the offence. On the report of complainant, *murasila* was drafted which was sent to police station Mullazai and was incorporated in the captioned F.I.R.

3. I have heard arguments of learned counsel for the petitioner, the learned State counsel assisted by learned counsel for the complainant and perused the file with their able assistance.

4. It is the case of prosecution that at the eventful time, the petitioner alongwith his brother was present inside the bulwark (*Burj/Morcha*) situated on the rooftop of their *Kotha* and after threatening them to stop, started indiscriminate firing which caused injuries to both i.e. the complainant and his brother. The record was read with the able assistance of the learned counsel for

parties and found that the place of occurrence is situated in the agricultural land of the parties where the accused/petitioner was shown standing inside the bulwark situated on the rooftop of the *Kotha* constructed for agricultural purposes. It is pertinent to mention that the place wherefrom the accused/petitioner allegedly fired at the complainant party is lying at a distance of 220 paces which can be rounded up as 400 feet. This is what is held by the apex Court in case titled **Abdul Jabbar alias Jabbari Vs. The State (2017 SCMR 1155)**, “Eye-witnesses claimed to have seen the occurrence from a distance of about 117-1/2 feet and still they claimed to have witnessed every detail of the incident including the different weapons being used by the accused party, which was a claim which could not be easily accepted”. The complainant is yet to establish that whether from such a long distance the voice if raised could be heard and as to whether the accused could reasonably be seen and identified from such a long distance that too inside the covered bulwark (Morcha). Another intriguing aspect of the case is that the Investigating Officer at the time of spot inspection did not recover crime empties from the spot where the accused were shown present at the time of firing. These are the things when placed together makes the case of the petitioner arguable for the purpose of bail. True, that while hearing bail application, the Courts are to exercise restraint and to avoid deeper appreciation of evidence,

but equally true that bail applications cannot be heard and decided in vacuum, rather the Courts seized of the matter should assess the available material brought before. The situation has been beautifully dealt with by the apex Court in case titled "**Zaigham Ashraf Vs. The State and others**" (2016 SCMR 18), wherein it has been held that:

"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 v 5 accused person, detaining him in Jail without just cause and reasonable ground."

The apex Court in its recent judgment reported as "**Samiullah and another Vs. Laiq Zada and another**" (2020 SCMR 1115), has further enlarged the scope of post arrest bail and preference has been given to liberty of the persons charged rather than incarceration in jail, in case the case on appreciation comes to one of further inquiry, here too, while applying the same parameters, the petitioner has been succeeded in making out a case for bail as one of

further inquiry. Resultantly, this petition is allowed and the accused/petitioner is directed to be released on bail subject to furnishing bail bonds in the sum of Rs:2,00,000/- (rupees two lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

5. Needless to mention that the observations so rendered are tentative in nature and shall not influence the mind of the trial Court.

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

Announced.  
Dt: 07.8.2020.  
Kifayat/PS\*

  
**JUDGE**

(S.B)  
Hon'ble Mr. Justice Sahibzada Asadullah

