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**BEFORE THE AUGUST PESHAWAR HIGH
COURT, BANNU BENCH**

Criminal Bail Application No. 231 - 2017

Niaz Ali s/o Gul Janan r/o Masti Khel Baitani,
Marwat.

(Accused / Petitioners)

Versus

1. The State
2. Yousaf Khan s/o Toti Khan r/o Masti Khel Baitani, District
Lakki Marwat.

(Respondents)

*Case FIR No. 330 dated 11-10-2003
u/s 302/324/148/149 PPC /3/4 Expl:
P.S Tajori District Lakki Marwat.*

Subject: BAIL PETITION U/S 497 Cr.P.C.

Respectfully Sheweth:-

1. That the accused / petitioners along with seven other co-accused have falsely been charged by the complainant in the ibid case and now the accused / petitioner is behind the bars at District Jail Lakki Marwat. *(Copy of FIR is annexed as annexure "A" & its Better copy is annexure "B").*
2. That the accused / petitioner after his arrest moved the court of learned Sessions Judge, Lakki Marwat for their release on bail and their bail petition was entrusted to the court of learned Addl: Sessions Judge-II Lakki Marwat for disposal, who vide order dated 29-05-2017 dismissed the same. *(Copy of the bail petition is Annexure "C" and its dismissal order is annexed as Annexure "D").*

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EXAMINER
Peshawar High Court,
Bannu Bench

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

BA No.231 -B of 2017.

Niaz Ali
Vs
The State and others.

JUDGMENT

Date of hearing _____ 20.06.2017 _____

Appellant-Petitioner by Mr. Farhan-
Ullah Braham J.L.V.

Respondent / State, by Mr. Shariq
Hamid Siddiqi

ISHTIAQ IBRAHIM, J.--- The petitioner, Niaz Ali seeks his release on bail involved in case F.I.R No. 330 dated 11.10.2003 under section 302/324/148/149 P.P.C, 3/4 Explosive Substances Act. Police Station Tajori, Lakki Marwat.

2. The prosecution story, according to F.I.R mentioned above is that on 11.10.2003 at 10.30. hours, when complainant, Mohammad Ismail and Mst. Hussan Bano, wife of Mohammad Ismail, were on the way

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Peshawar High Court
Bannu Bench

towards their house and reached near the house of Sheikh Eider Khan, situated in village Masti Khel, accused petitioner and co-accused Masood Khan, Maies Khan and Fida Mohammad started firing from one side with their respective Kalashnikovs at Mohammad Ismail Khan, as a result of which he was hit and fell down on the ground, while from the other side of road, co-accused Zamir Gul, Zamir Nawaz, thrown hand grenade at Mst. Hussan Bano, which blasted and co-accused Mohammad Fiza also fired at Mst. Hussan Bano, as a result of which she sustained injuries. The accused after commission of offence decamped from the spot. When complainant attended Mohammad Ismail he breathed his last. Motive behind the offence alleged by the complainant was previous blood feud.

3. I have heard learned counsel for the parties and perused the record with their assistance.

4. Record reveals that four persons including accused/ petitioner were charged by giving general role of

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Peshawar High Court.
Banhu Bench

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EXAMINER
Peshawar High Court,
Rannu Bench

specific injury had been attributed to respondent No.2. Admittedly no weapon had been recovered from the possession of respondent No. 2 during the investigation of this case. The Post-mortem Examination Report in respect of the deceased shows that the deceased had received only one fire-shot and that solitary fire-shot stands attributed by the prosecution to three accused persons including respondent No.2. It is, thus, not clear at this stage as to whether any injury had been "caused by the said respondent to the deceased or not. The F.I.R. itself refers to pending litigation between the parties and, therefore, a possibility of spreading the net wide by the complainant party so as to falsely entangle respondent No.2 is a possibility which cannot safely be ruled out of consideration at this stage.

6. Moreover, despite indiscriminate firing by accused and throwing hand grenade no crime empty or parts of hand grenade were recovered from the spot, which creates doubt regarding the place of occurrence and benefit of which can be extended at bail stage in favour of accused. Reliance is placed on case titled

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EXAMINER
Peshawar High Court,
Ranna Pacha

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EX. 11
Peshawar

that co-accused have been acquitted bail cannot be granted to the accused as a matter of right but, inter alia, the same can be taken as one of the ground for the grant of bail.

8. There is no denial to the fact that whatever is alleged in the F.I.R cannot be taken as a gospel truth and if the allegation of the F.I.R are prima facie contradictory to the other material, then the same cannot be totally ignored and can be taken at bail stage, as in the instant case, F.I.R is contradictory to the site plan, medicolegal report and PM report, which fact also lead the case of accused/ petitioner to one of further inquiry. Reliance is placed on case titled

"Shah Mohammad Khan and another Vs the State"

(1991 PCr.LJ 65 Peshawar), wherein it is held that:

"It can also not be denied that whatever is alleged in the F.I.R. cannot in all cases be taken as conclusive or gospel truth. If the allegations in the F.I.R. are prima facie negatives by the other materials patent on record then that can also be taken into consideration and it would not be advisable and just to ignore these materials on account of the direct charge in the F.I.R. If

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EXAMINER
Peshawar High Court.
Rannu Bench

such defects and doubts in the prosecution case are pointed out at the time of arguments even at bail stage then those cannot be totally ignored merely because the accused is directly charged in the F.I.R. but these can be kept in view qua the charge in the F.I.R. and tentative assessment of these defects can be made even at bail stage."

9. Mere abscondance how long it may be cannot hamper the concession of bail, if the accused found entitled to the same on merits of the case. Reliance is placed on case titled "Khan Mir Vs Amal Sherin alias Kaml and 2 others" (1989 SCMR 1987) wherein it is observed that:

"I have considered the arguments of learned counsel for the parties very seriously. No doubt both the respondents remained fugitive from law for about three months but it is also a fact that three persons have been charged for firing at the deceased but he was hit only with one shot. I am, therefore, of the considered opinion that the case was of further inquiry and the learned Sessions Judge has exercised his discretion properly which does not call for any interference by this Court"

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EXAMINER
Peshawar High Court,
Rannu Bench

10. It is not the spirit of law that the accused should be kept in jail as punishment only on the ground that he is directly charged for an offence falling under the prohibitory clause of section 497 Cr.PC. Because a mistaken relief of bail can be repaired by convicting the accused on proof of his guilt, but no satisfactory reparation can be offered to him for his unjustified incarceration, albeit, his acquittal, at the trial. Wisdom is derived from the *Ziagham's* case mentioned above, wherein it is 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

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repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground."

11. The investigation in the instant case is complete and accused/ petitioner is no more required for further investigation, hence, a presumed innocent person keeping behind the bars has the right to be set at liberty, so that he may defend his case.

12. For the above stated reasons, this bail petition is allowed, accused/ petitioner Niaz ali is admitted to bail provided he furnished bail bonds in the sum of Rs.2,00,000/-(two lac) with two sureties each in the like amount to the satisfaction of Illaq^y Duty Magistrate.

13. Before parting with the order it is directed that any observations made in this order are tentative in nature and should not prejudice the proceeding before the learned trial court, where the case be decided on its own merits after recording of the evidence.

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EXAMINER
Peshawar High Court
Rannu Borch

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

Announced.
20.06.2017
Azam/P.S.

-sd-
Mr. Justice Ishtiaq Ibrahim

CERTIFIED TO BE TRUE COPY

21/07/2017

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

21/6