

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

Cr.M BA No.3688-P/2019

Mujtaba Hassan Vs the State etc

Date of hearing: 06.01.2020

Dr. Amir Ajum Khattak, Advocate, for the petitioner.

Barrister Babar Shahzad Imran, AAG, for the State.

Mr. Aman Khan Bangash Advocate for the complainant.

JUDGMENT

AHMAD ALI, J. Through the instant petition, the petitioner (Mujtaba Hassan) seeks his post arrest bail in case FIR No.267 dated 09.08.2019 u/s 302 PPC, PS Usterzai, Kohat. Same relief was, however, declined to him by the learned Trial Court vide order dated 07.10.2019.

2. In view of the Judgment in case titled “**Muhammad Shakeel Vs the State**” reported in **PLD 2014 SC 458**, facts of the case need not to be mentioned at bail stage. However, present petitioner is behind the bars on the charge of murder of son of the complainant.

3. Argument of learned counsel for the parties heard and record gone through.

4. No doubt, it was an unseen occurrence and initially nobody was charged for the commission of offence. It so happened, when the complainant recorded his 164 Cr.P.C

statement before the learned Judicial Magistrate on 22.08.2019, after a considerable delay of 13 days and without disclosing his source of information in this regard.


5. Being an unseen occurrence, there is no direct evidence to prima facie connect the present accused petitioner with the commission of offence. Be that as it may, suffice it to say that the evidence in shape of CDR data regarding presence of accused in village, without any corroborative evidence is a weak type of evidence, and refusal of bail by the learned trial Court on the said sole ground could not be justified, especially when it has not been mentioned in the FIR or statement recorded under section 164 Cr.P.C that at what time deceased was lastly seen in the company of the accused. Reliance could be placed on 2015 YLR 1952.

6. In the circumstances, case of accused-petitioner will require further probe to establish his involvement in the commission of offence through reliable evidence as provided under Sub-Section (2) of Section 497 Cr.P.C, where grant of bail is a rule and refusal thereof is an exception. Besides, in view of no recovery/discovery and no confessional statement by the accused, his involvement in the case is required to be established through *pro & contra* evidence during trial. In this regard reliance could be safely placed on case law reported in 2017 SCMR 61,

2014 SCMR 12. Petitioner is behind the bars since his arrest and is also no more required for further investigation.

7. Moreover, it has 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. Before parting with the order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in (1996 SCMR 1845).



9. In view of the above discussion and on tentative assessment of material available on file, a case arguable for the grant of bail is made out. Resultantly, this petition is allowed and the accused-petitioner, named above, is admitted to 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, who shall ensure that the sureties are local, reliable and men of means.

10. Above are the detailed reasons of short order of even date.

**Announced:
06.01.2020**


JUDGE

Amjad, PS SB

Mr. Justice Ahmad Ali

Judgment Sheet

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Barrister Babar Shahzad Imran, AAG, for the State.

Mr. Aman Khan Bangash Advocate alongwith complainant.

ORDER

AHMAD ALI, J. For the reasons to be recorded later, this petition is allowed and the petitioner (Mujtaba Hassan s/o Lal Hassan), charged in case FIR No.267 dated 09.08.2019 u/s 302 PPC, PS Usterzai, Kohat, is admitted to bail provided he furnishes bail bonds in the sum of Rs.200,000/- (two lac), with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, concerned, who shall ensure that the sureties are local, reliable and men of means.

***Announced:
06.01.2020***



JUDGE

Amjad, PS SB

Hon'ble Mr. Justice Ahmad Ali

SCANNED