

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT.

JUDGMENT

Cr.MBA No.1427-P/2022.

Date of hearing 27.06.2022.

Shah Khalid Vs The State.

petitioner (s) by: **Mr. Sheeraz Ali**
 Advocate.

State by: **Syed Qaiser Ali Shah**
 AAG.

Complainant by: **Mr. Faqir Hussain**
 Advocate.

MOHAMMAD IBRAHIM KHAN, J:-.

This single order shall dispose of present bail petition (Cr.MBA No.1427-P/2022) and connected Cr.MBA No.1510-P/2022, filed by petitioners Shah Khalid and Shah Faisal respectively, seeking their release on bail in one and the same case FIR No.407 dated 16.03.2022, under Sections 393/ 394/34/100 PPC, at Police Station Bhana Mari, Peshawar.

2. As per prosecution case, petitioners alongwith co-accused Hassan Shah deceased were charged by complainant Abdullah for snatching mobile and cash amount on gun point from him and PWs Adnan and Atta Ullah; as well as firing at them; upon which complainant also started firing in self defence at the accused party, due to which petitioner Shah Khalid and co-accused Hassan Shah were arrested in injured condition while the co-petitioner Shah Faisal decamped from the spot. Lateron, co-accused Hassan Shah succumbed to his injuries in the hospital. On the report of complainant, present case was registered against all the accused.

3. Arguments heard and record perused.

4. No doubt, both the petitioners are directly charged in the FIR by names but as per contents of report, at the time of occurrence, all the accused had muffled their faces, out of whom two accused were arrested in injured condition on the spot

while petitioner Shah Faisal succeeded in decamping from the spot; however, no source of satisfaction has been disclosed by complainant that how he identified the petitioner Shah Faisal and how he came to know qua the actual name and parentage etc of petitioner Shah Faisal, when he had allegedly muffled his face at the time of occurrence. Even no proper identification parade in respect of petitioner Shah Faisal has been conducted through complainant or other prosecution witnesses present on the spot in support of version of complainant, making it a case of further inquiry. Besides, no crime weapon has been recovered from the immediate possession of petitioner Shah Faisal or at his instance and pointation, making his case arguable for the purpose of bail.

5. So far as petitioner Shah Khalid is concerned, he alongwith co-accused have been assigned the role of indiscriminate firing at complainant party but surprisingly

none from the complainant party received a single fire arm injury or even a scratch from the said indiscriminate firing allegedly made by all the accused; rather petitioner and co-accused Hassan Shah sustained injuries from the firing of complainant party, due to which co-accused Hassan Shah succumbed to his injuries later on in the hospital, creating doubt qua mode and manner of the occurrence advanced by the prosecution.

6. Initially the bail petitions (BA No.1029-P/2022) and BA No.1182-P/2022) filed by petitioners were dismissed as withdrawn by this Court vide order dated 22.04.2022, wherein investigation officer was directed to record statements of petitioners on their choice under Section 161 Cr.PC or before learned Judicial Magistrate concerned and thereafter, petitioners were kept at liberty to file fresh bail petition if so desired. In their statements under Section 164 Cr.PC, they have charged the complainant party for attempting to commit

their Qatle Amd as well as committing Qatle Amd of co-accused Hassan Shah denying the allegations levelled against them. Amongst the petitioners, Shah Khalid is admitted in LRH-MTI, Peshawar, whose condition is pathetic on account of injuries sustained at the hands of complainant. The physician note prescribes the condition of petitioner Shah Khalid as under:-

“the patient condition is weak, lethargic, desaturated and pale looking and absolutely unfit for mobilization. We donnot recommend patient mobilization for Court statement. The patient may experienced severe irreversible injury/anomaly. Therefore, it is strongly advised to take statement at bedside.”

Besides, the reasons given in the preceding Paras and the medical ground available for petitioner Shah Khalid, the most important aspect for consideration of granting bail to the petitioners is the non applicability of Sections 393/394 PPC, as the petitioners cannot be saddled for inflicting hurt to the complainant during so far robbery, indicating that both the sections would not

be attracted for reasons under version put forthwith by the complainant in the First Information Report and even in the investigation lasted on the same footing. Despite remaining in police custody, petitioners have not made any confession before the competent Court nor the prosecution has collected any material which could link the petitioners with the gang of robbers, therefore, applicability of sections of law levelled against petitioners would be seen during trial after recording pro & contra evidence. At present the above facts make the case of both the petitioners arguable for the purpose of bail. Consequently, both these bail petitions are allowed and the petitioners Shah Khalid and Shah Faisal are admitted to bail subject to furnishing bail bonds to the tune of Rs.100,000/- (one lac) each with two sureties each in the like amount to the satisfaction of learned trial Court/ Illaqa/Duty Judicial Magistrate concerned

who shall ensure that the sureties are local,
reliable and men of means.

The ibid observations are the tentative
assessment of the material available on the
record of the case, which shall not influence
the mind of the learned trial Court in any
manner at the time of trial.

Announced.
27.06.2022.

J U D G E