

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

CrM BA No. 75-D of 2017

JUDGMENT

Date of hearing 16.03.2017

Appellant-petitioner Malik and another by Mr. Sana Ullah Khan
Gandapur Advocate.

Respondent State etc by Mr. Adnan Ali Assistant A.G and M/S
Saifur Rehman Khan and Inam Ullah Khan Kundi Advocate for
Complainant.

MUHAMMAD AYUB KHAN, J.- Through the instant
petition, the petitioners Malik and Gul Bahram seek their
release on bail in case FIR No.516 dated 29.8.2010
registered under sections 302/34 PPC at police station,
Tank, District Tank as their such request was turned down
by learned Sessions Judge, Tank vide order dated
14.02.2017.

2. The prosecution story, in brief, is that on
29.8.2010 at 0730 hours, the complainant Sher
Muhammad (now deceased) lodged the report at
Emergency room of Civil Hospital, Tank to the effect that
at ‘subh-vela’, he was present in his land, when in the
meanwhile, petitioners fired at him with their respective
Kalashnikovs from the ‘burj’ of Gul Zaman. He got

injured and fell down. Motive for the occurrence was stated to be disputed over land.

3. The learned counsel for the petitioner vehemently contended that two accused are charged in the report for firing and none of them is charged for specific injury; that nothing incriminating was recovered either from possession of the petitioners or at their pointation; that absence of petitioners for quite some time was not intentional and even on this ground alone, bail cannot be refused to them. The learned counsel argued that the material on record creates doubts in the prosecution case and such benefits can be given to the petitioners at bail stage. In support of his contentions, the learned counsel relied on the cases of Dildar Ali. Vs. The State (1999 SCMR 1316), Yasin and 3 others. Vs. The State and another (PLD 2001 Peshawar 144), Sher Zaman alias Alamsher. Vs. The State (1992 P.Cr.L.J 409 Peshawar), Zaigham Ashraf. Vs. The State and others (2016 SCMR 18), Muhammad Aslam. Vs. The State and others (2016 SCMR 1520), Ikhtiar and 2 others. Vs. The State and another (2016 Y L R 2443), Muhammad Sarwar alias Bao. Vs. State and another (PLJ 2016 Cr.C (Lahore) 483), Amrez and others. Vs. The State and another (2016 P.Cr.L.J Note 49 Lahore), Siraj. Vs. The

*State and another (2016 P.Cr.L.J Note 36 Peshawar),
Rehmanullah. Vs. State and another (PLJ 2016 Cr.C
Peshawar 908) and Aziz Khan. Vs. State and another
(2016 SCMR 1792).*

4. On the other hand, the learned Law Officer representing the State assisted by learned counsel for legal heirs of deceased refused the arguments of learned counsel for the petitioner and strongly opposed the bail application.

5. I have considered the arguments of learned counsel for the parties and have gone through the record.

6. It is well settled law that at bail stage, deep appreciation of record is not advisable and tentative assessment of the record has to be made. Keeping in view this principle, I would avoid discussion on deep merits of the case. On tentative assessment, the petitioners are directly charged in the FIR by the deceased then injured himself. The postmortem report showing two entry wounds, ocular evidence and motive for commission of offence prima facie support the version of prosecution. Moreover, the petitioners remained fugitive from law for sufficient long time i.e. for more than seven years which is sufficient to disentitle them for the grant of bail. All

these factors, on tentative assessment, connect the petitioners with the commission of offence entailing capital punishment, therefore, I am not inclined to release them on bail. The case law relied upon by learned counsel for the petitioners proceeds on different facts and circumstances and is of no help to him. In the judgments reported as *PLD 2001 Peshawar 144, 2016 P.Cr.L.J Note 49 Lahore, 2016 P.Cr.L.J Note 36 Peshawar and PLJ 2016 Cr.C Peshawar 908*, appeals were disposed of and benefit of doubt was extended and at bail stage, benefit of doubt is immaterial as it could only be found in the evidence recorded during trial. In the case of *Zaigham Ashraf. Vs. The State and others (2016 SCMR 18)*, the petitioner had taken the plea of alibi whereas no such plea has been taken by the petitioners in the instant case. In the case of *Muhammad Sarwar alias Bao. Vs. State and another (PLJ 2016 Cr.C Lahore 483)*, the petitioner was reported to be equipped with 12 bore pump action but did not make any fire nor raised lalkara, thus his case was held to be of further inquiry whereas in the instant case, both the petitioners are charged for effective firing. In the case of *Aziz Khan. Vs. The State (2016 SCMR 1792)*, it was observed that if on tentative assessment, dying declaration and other material on record creates reasonable doubt in a prudent mind, its benefit is to be

given to accused but in the instant case, as stated earlier, the dying declaration finds support from ocular and medical evidence. In the case of ***Ikhtiar and 2 others. Vs. The State (2016 YLR 2443)***, role of firing at the deceased had been specifically attributed to absconding co-accused and the petitioners therein were attributed the role that they while aiming their weapons at the complainant, warned him not to move and later on when the complainant tried to apprehend absconding co-accused after murder of his son, accused persons opened fire at the complainant which proved ineffective whereas in the case in hand, both the petitioners are specifically charged for firing at the deceased. In the cases of ***Muhammad Aslam. Vs. The State and others (2016 SCMR 1520) and Sher Zaman alias Alamsher. Vs. The State (1992 P.Cr.L.J Peshawar 409)***, it was held that abscondence alone would not be hurdle in the way of bail to an accused if his case falls within the ambit of further inquiry whereas the instant case does not fall within the purview of further inquiry. In the case of ***Dildar Ali . Vs. The State (1999 SCMR 1316)***, pre-arrest bail was confirmed on the ground that case of the petitioner required further inquiry whereas no element of further inquiry exists in the instant case.

7. For the reasons mentioned above, the instant petition being bereft of merit and substance is hereby dismissed.

Announced.
Dt: 16.3.2017.
Habib/*

JUDGE