

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH,

JUDICIAL DEPARTMENT

Cr.M/BCA No.118-A of 2015

JUDGMENT

*Date of hearing.....***27.08.2015***.....*
Appellant..... Mst. Nagina Gul *.....*
Respondent..... Tariq *.....*

QALANDAR ALI KHAN, J:- Mst. Nagina Gul Ali, widow of Salabat Khan, petitioner has moved the instant application for cancellation of bail granted to accused/respondent No.1, Tariq son of Gul Faraz, in case vide FIR No.730 dated 20.10.2014 under Section 302 PPC read with Section 109 PPC, Police Station Mirpur, Abbottabad, by the learned Additional Sessions Judge-II, Abbottabad, vide impugned order dated 27.02.2015.

2. The FIR was lodged on the report of father of deceased Salabat Khan, namely, Sawar Khan, who charged the accused/respondent for the '*Qatl-i-Amd*' of his son, Salabat Khan at 1400 hours on 20.10.2014 in his report lodged in the emergency ward of ATH at 1415 hours on the same date i.e. 20.10.2014. In his report, the complainant disclosed the source of his information as driver Gulzar and Gunman Munawar Khan, who were accompanying his deceased son from his house to Mandian and were present on the College road at the time of occurrence. The motive for the offence was cited as previous blood feud; and father of the accused/respondent, Gul Faraz, was also charged for instigation/abetment.

3. The learned Additional Sessions Judge-II, Abbottabad, admitted the accused/respondent to bail on the following grounds;

- (i) The complainant was not the eye witness of the occurrence.
- (ii) There was established enmity between the parties, therefore, charge of false implication could not be ruled out.
- (iii) The medical report in the shape of Postmortem examination as well as site plan showed that the deceased had been fired at from a close range.
- (iv) The security guard namely Munawar Khan who was accompanying the deceased was armed with 8 AM pistol but no effort had been made by him to counter the assailant.
- (v) The other witness namely Gulzar did not know the murderer and the name of killer was disclosed to him by the co-witness Munawar.
- (vi) The mode and manner of implicating the petitioner for murder of deceased and alleged presence of witnesses on the spot indicated that in the event of previous established enmity, false implication could not be

ruled out, which in turn brought the case of petitioner to the ambit of further inquiry.

4. Arguments of learned counsel for the petitioner, learned counsel for accused/respondent No.1 and Additional AG heard, and record perused.

5. It may be observed, at the very outset, that while granting bail the Court ought to see whether there was material on the available record to *prima facie* connect the accused/petitioner with the commission of offence; and, as such, deep appreciation of evidence would not be permissible at the bail stage. However, the impugned order of learned Additional Sessions Judge-II, Abbottabad, dated 27.02.2015, speaks otherwise, as the learned Additional Sessions Judge not only overlooked the *prima facie* aspect of the case but also accorded undue importance and embarked on deep appreciation of

conduct of the security guard at the time of occurrence.

6. Notwithstanding the fact that the security guard/Gunman, Munawar Khan, not only explained his conduct at the time of occurrence in his statement before the Police under Section 161 Cr.PC followed by his statement under Section 164 Cr.PC, which finds support from the statement under Section 161 Cr.PC of the driver, Muhammad Gulzar, the security guard/gunman also explained as to how he recognized the accused/respondent at the time of commission of the offence. Besides, there was overwhelming evidence on the record to *prima facie* connect the accused/respondent with the offence, such as, direct charge of '*Qatl-i-Amd*' against the accused/respondent in the promptly lodged FIR in the emergency ward of ATH by the father of the deceased who had rushed to the Hospital on receiving

information about his son falling victim to the firing. It is, indeed, unlikely on the part of an aggrieved father to substitute an innocent person for the real culprit. There was a strong motive of previous enmity, and considering the same as a ground for false implication at the bail stage would be farther from reality, to say the least. The complainant nowhere claimed to be an eye witness, and mentioned the names of security guard/Gunman, Munawar Khan, and driver Gulzar as the two persons accompanying his deceased son at the time of occurrence, who furnished ocular account of the occurrence. The medical report supporting the site plan in respect of firing from close range should have been a good ground for holding the accused/respondent *prima facie* connected with the commission of the offence. Likewise, the disclosure of the name of accused/respondent to driver Gulzar by

security guard/Gunman, Munawar, was not so significant and a fatal dent in the case of the prosecution so as to create serious doubts about veracity of the statements of the two eye witnesses at the bail stage. Additionally, after remaining absconder and having been proceeded against under Sections 204 and 87 Cr.PC as well as 512 Cr.PC, after his arrest, the weapon of offence i.e. 30 bore pistol was recovered from the possession of accused-respondent which was sent to FSL along with two 30 bore pistol crime empties recovered from the spot, and report of the fire arm expert was received in the affirmative.

7. In short, the impugned order of the learned Additional Sessions Judge-II, Abbottabad, dated 27.02.2015 is seriously flawed and militates against the expressed and established provisions of law and justice, hence not sustainable. **1999 SCMR**

338, 2006 SCMR 1265, 2007 SCMR 482, 1996 SCMR 172, 2004 YLR 400, PLJ 2014 Cr.C. (Peshawar) 808.

8. Therefore, on the acceptance of the petition, the bail granted to accused/respondent No.1 is cancelled and order of the learned Additional Sessions Judge-II, Abbottabad dated 27.02.2015 is recalled, with the result, accused/respondent No.1 be taken into custody and produced before the concerned Court.

Announced.
Dt.27.08.2015.

J U D G E