

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(Judicial Department)

BA No.119-B of 2018

Amanullah Vs the State etc

JUDGMENT

Date of hearing 04.05.2018

Petitioner(s)/Appellant(s): **By Mr. Naqib**
ullah Khattak, dvocate.

Respondent(s): **By Umer Daraz, Advocate.**
State By Shahid Hameed Qureshi,
Addl: AG

ABDUL SHAKOOR, J--- This petition has been directed against the order, dated 06-04.2018, passed by the learned Sessions Judge Karak, whereby the bail sought by the petitioner has been refused in a case vide F.I.R No.757 registered under sections 324/337-A(i)/148/149 P.P.C, against him on 17-9-2016 at Police station Latamber, district Karak.

2. Succinctly, the facts as disclosed through the FIR are that on 17.09.2016 at 1935 hours,

complainant Mir Zalem , who was brought in a Datsun to the KDA hospital Karak, with the help of his co-villagers, reported the matter in injured condition to the effect that on eventful day accused/petitioner Amanullah and others namely Barkatullah, Faizullah and Muhammad Saleem, his co villagers, were playing cricket at the venue of occurrence, while Muzaffar Khan S/O Sahib Din was standing nearby them; that they were prevented by him from playing cricket in the thoroughfare, being used by women folk but Muzaffar Khan got infuriated and also commanded others to beat him, due to which other accused started beating, giving fists and kicks blows; that his sister Mst. Tahira Kalsoom, brother Wali Muhammad came there in order to rescue him from clutches of the accused but meanwhile, accused/ petitioner came out from his house and started firing at him with his Kalashnikov,

as a result of which he was hit on his arm and fore head. Hence accused/petitioner alongwith others was booked in case FIR (ibid) for attempting at his life effectively and also for causing injuries to his sister Mst. Tahira Kalsoom.

3. After abscondence of long period of about one year and six months, accused/petitioner Amanullah was arrested, he moved bail petition before the Court of learned Sessions Judge, Karak which was rejected. Hence, the instant Cr.Bail application.

4. The learned counsel for the petitioner vehemently argued that the question of guilt or innocence of the petitioner is yet to be determined and mere delay in arrest, after the occurrence, cannot be treated as an absconsion of the petitioner a sufficient ground for refusal of bail. He further argued that notwithstanding the allegation of

causing fire arm injury, the tenor of the occurrence would create doubt qua the liability of petitioner under section 324 PPC and case would fall within the ambit of subsection (2) of section 497 Cr.P.C for the purpose of further inquiry into the nature of offence.

5. Conversely, learned Add: AG for state, assisted by learned counsel for complainant, while opposing bail, argued that petitioner is directly charged specifically for causing injuries to the complainant on vital part of his body; that circumstantial evidence as well as Medical evidence also supports the version of FIR and the offence falls within the prohibitory clause of section 497 Cr.P.C, hence, accused/petitioner is not entitled for concession of bail.

6. I have heard arguments of learned counsel for the parties, Addl: AG for state, and perused the record with their valuable assistance.

7. It appears from the record available on the file that in this case, the occurrence took place on 17-9-2016 at about 1745 hours, whereas the report has been lodged on the same date at about 1935 hours, while distance between the crime scene and police station has been shown as 20 to 22 kilo meters, meaning thereby that there is no chance of consultation and deliberation.

8. Mir Zalam is the complainant of the case and he has attributed direct role of firing to the accused/ petitioner Amanullah, for causing injuries to him at his right arm and fore head, due to which his arm became incapable to perform functioning, while other co accused have been attributed role of beating and giving fists and kicks to his brother

Wali Muhammad and his sister Mst. Tahir Kalsoom. The crime empties recovered from the crime scene by the Investigating officer, were sent to the FSL report, and the FSL report in this respect available on file shows that that all crime empties four in number were fired from one and the same weapon, i.e Kalashnikov,

9. The contention of learned counsel for the petitioner that the co-accused of instant case have already been enlarged on bail, hence the present accused/petitioner is also entitled for the same relief under the rule of consistency, is misconceived, as the co-accused have been attributed the role of commanding and beating brother of accused /petitioner and his sister while the present accused/petitioner has specifically been charged for causing injuries to the complainant by firing at him with his kalashnikov, thus, the role of accused/

petitioner is not at par with the case of co-accused, and is not entitled for concession of bail under the role of consistency.

10. The occurrence has taken place in the day light and both the parties are known to each other, therefore, question of misidentification, does not arise at this stage. Medical report, site plan, blood stained garments of deceased as well as empties from the spot, further corroborates version of prosecution. When all these material pieces of evidence taken in juxtaposition, a prima facie case is made out against the petitioner/accused.

11. The points urged at the Bar by learned defence counsel, in regard to commencement of trial and cross version, if taken into consideration and any view is expressed thereon by this Court, it would not only touch the merit of the case, but would also prejudice the case of either side, which

has time and again been discouraged and disapproved by the superior Courts. The evidence of prosecution cannot be tested in depth at bail stage; only tentative assessment is to be made.

12. Plea of alleged cross version invariably, carries phenomena of self defence in it and when from record, it is not discernible that who has aggressed and who has acted in self defence, the parties are normally allowed bail. But in the instant case, on tentative assessment of the evidence, no such circumstance can be gathered except the F.I.R No.791, wherein allegations of beating and giving fists and kicks are made against complainant Mir Zalim in that case, but plea of this cross version at this stage, could not be taken into consideration, as the plea of self defence, if so raised, is yet to be established by the accused during trial. When prosecution evidence prima facie connects the

accused with commission of crime, entailing capital punishment and he himself admits the occurrence by taking plea of cross version, then why mere cross F.I.R should not be considered as license for grant of bail, particularly, in view of prevailing law and order situation in society. Accused of every cross case cannot claim bail as a matter of right. Rather, facts of every cross case are to be tentatively scrutinized and assessed and then to be decided on its own merits. In this regard case of 'Nisar Muhammad Wassan and another Vs the State' (1992 SCMR 501) and Arif Din Vs Amil Khan and another' (2005 SCMR 1402) may be referred.

13. Moreover, the accused/ petitioner remained absconder for a long period, for which no explanation much less plausible one has been furnished by him. It is settled law that a fugitive from law, who fails to provide reasonable explanation for

his abscondence, loses some of his normal rights and he may be declined bail on the ground of abscondence, leaving apart, the merits of the case.

14. It appears from the record that challan has already been put in Court, trial has been commenced, but in the meanwhile, case file was requisitioned by this Court in connection with the instant petition. Much has been argued before me from either side, but discussion on all these points would amount to deeper appreciation of evidence which has always been deprecated by the Hon'able Superior Courts at bail stage, particularly, at a stage when trial has been commenced or is likely to commence in the near future, because any expression on merits at such stage, would cause prejudice to either party, at trial stage and this principle has been firmly and clearly laid down by the apex Court in **Muhammad Ismail's case (PLD 1989 585).**

15. For the reasons discussed above, on tentative assessment of the material available on record, accused/petitioner is prima facie connected with the crime. Hence, he is not found entitled to the concession of bail. Resultantly, the bail petition of accused/petitioner stands dismissed, however, learned trial Court is directed to conclude the trial within six months, positively if not earlier than that.

Any observations made in the order being tentative in nature should in no way prejudice the proceedings before the learned trial Court.

Announced.
04-05-2018

J U D G E.