

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.4001-P/2020

Hashmat son of Mahmood,
r/o Pushtakhara Payan, Peshawar.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Mr. Fida Hussain Khalil, Advocate.</u>
For State :-	<u>Mr. Muhammad Furqan, Advocate.</u>
For complainant:	<u>Mr. Nangial Zeb, Advocate.</u>
Date of hearing:	<u>25.01.2021</u>

ORDER

ROOH-UL-AMIN KHAN, J:-Petitioner Hashmat, seeks post arrest bail in case FIR No.1055 dated 02.10.2017, registered under sections 302/148/149/427 PPC, at Police Station Pushtakhara.

2. According to FIR/report of complainant Haji Toor Khan on the fateful day he along with his brother Gohar Ali and nephew Muhammad Shoaib went to Bara road on a motorbike bearing registration No.9394-Peshawar KPK for the purpose of purchasing grocery. He and his nephew were busying in purchasing articles whereas Gohar Ali was waiting on the motorbike, when in the meantime, accused Farman Ali, Rehman Ali, Fareed Ullah, Khalid Khan, Sahib Ullah, Zeeshan along with Hashmat petitioner came on motorcycles and opened fire at Gohar Ali, as a result, he

got hit and died at the spot. In addition to complainant the occurrence is stated to have been witnessed by PW Muhammad Shoaib and people present at the spot, hence, this case.

3. Arguments of learned counsel for the parties heard and record perused.

4. It appears from the FIR that petitioner along with co-accused is directly charged with specific role of firing at the deceased in a promptly lodged report by the complainant, eliminating the possibility of consultation and deliberation in making report. Being a broad day light occurrence and parties well known to each other prior to the occurrence, question of mistaken identity also does not arise. Version of complainant is substantiated by eyewitness Muhammad Shoaib in his statement recorded under section 161 Cr.P.C. Recovery of blood from the spot from the place of the deceased, his last worn bloodstained garments coupled with positive Serologist report in respect thereof also corroborates the prosecution versions. Similarly, recovery of 17 crime empties of 30 bore and 4 crime empties of 09 MM bore from the places attributed to the accused in the site plan, which according to the FSL report have been fired from different weapons coupled with multiple firearm injuries sustained by the deceased resulting into his unnatural death as well as noticeable abscondence of the petitioner for more than two years

further corroborate the ocular version of the prosecution. No doubt, co-accused Farman Ali and Shahid Ullah, after facing trial have been acquitted by the trial Court vide judgment dated 11.09.2020, however, according to learned counsel for the complainant, the complainant has filed appeal against their acquittal before this court in which notice has been issued to the acquitted co-accused. Even otherwise, acquittal of co-accused alone cannot be made a ground for release of petitioner on bail as evidence which is to be led against the petitioner is to be appreciated and looked into independently. On tentative assessment of the material on record, reasonable grounds exist which prima facie connects the petitioner with the commission of offence which entails capital punishment and falls within the Prohibitory Clause of section 497 Cr.P.C., hence, I am not inclined to exercise the discretion of bail in favour of the petitioner.

5. Accordingly, this petition being meritless is hereby dismissed.

Announced:

25.01.2021

M.Siraj Afridi PS

SENIOR PUISNE JUDGE

SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge

