

JUDGMENT SHEET

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

BA. No.176 -B/2020.

Muhammad Riaz and another.

Vs.

The State.

JUDGMENT

Date of hearing _____ 07.05.2020 _____.

Petitioner by: Mr. Mirzali Khan Khattak advocate.

Respondent by: Mr. Imam Bashir in person.

State by: Mr. Qudratullah Khan Gandapur Asstt: A.G.

9 **SAHIBZADA ASADULLAH, J.-** The petitioners after having been booked in case F.I.R No 186 dated 22.03.2020, under sections 302/324/353/148/149 P.P.C, 15 A.A, were arrested and after their arrest they applied for their release on bail before the Court of Additional Sessions Judge-II/Judge Special Task, Karak, which was regretted vide order dated 09.04.2020. Feeling aggrieved the petitioners approached this Court through the instant bail petition.

2. Brief facts giving rise to the instant bail petition are that the complainant Kariman Ali ASHO on 22.03.2020 at 14.25 hours reported the matter that today at 11.15 hours, the police party including him had escorted a convoy to provide security to one Gul Rauf advocate to ensure his safe passage to the graveyard of his relatives situated at Spina Banda to offer Fateha, in compliance of the

directions issued by the august Peshawar High Court, Bannu Bench, in WP No. 3938/2016. Gul Rauf advocate was also accompanied by his nephew Imam Bashir son of Muhammad Rahman and on their way back from the graveyard the accused Zakirullah, Rizwanullah sons of Sher Nawaz, Sher Nawaz son of Gul Chaman, Muhammad Riaz and Noor Tiaz sons of Muhammad Rasool, Muhammad Rasool son of Gul Sanat Shah and Sabir Nawaz son of Adil Nawaz, all residents of Spina Banda, duly armed appeared and started indiscriminate firing on the police convoy which resulted into the death of Gul Rauf advocate and injuries to Hamayun a police constable. The incident was communicated to the control room and the accused were chased, where the parties exchanged heavy firing, as a result of which one accused Noor Tiaz was killed, whereas accused Muhammad Riaz son of Muhammad Rasool, and Muhammad Rasool son of Gul Sanat Shah were arrested. From possession of accused Muhammad Riaz a Kalashnikov without number with fixed charger, double magazines containing 7 rounds and from possession of accused Muhammad Rasool son of Gul Sanat Shah a 30 bore pistol without number with fixed charger were recovered, while rest of the accused decamped from the spot. This was on 24.02.2020, when the Investigating Officer recorded the statement of Imam Bashir under section 161 Cr.P.C. where after he was produced before the Court of Judicial Magistrate and his statement under section 164 Cr.P.C. was recorded, where he specifically charged one Sabir Nawaz for causing the death of Gul Rauf advocate and Noor Tiaz son of Muhammad Rasool for injuries to constable Muhammad Hamayun.

3. Learned counsel for the parties alongwith Asstt: Advocate General were heard at length and with their valuable assistance the record was gone through.

4. It was submitted in favour of the petitioners that the charge was the outcome of mala fide and ulterior motives; and that no specific role has been attributed to any one of the petitioners and that in fact it was the police party who committed the murders; and that the case is one of further inquiry.

5. Conversely, the learned counsel for the complainant alongwith Asstt: Advocate General submitted that it was a day light occurrence; and that the petitioners were arrested on the spot and recoveries were effected from their possession; and that the offence is heinous and falls under the restrictive clause of section 497 Cr.P.C.

6. The incident occurred at village Spina Banda, which is the place of the petitioners and the co-accused; and that there was a blood feud between the parties, so the involvement of many more accused of one and the same family is a question which needs determination. The complainant of the case is Kareman Ali ASHO, who was allegedly heading the convoy and this has been stated in the report that one Imam Bashar nephew of the deceased Gul Rauf was also accompanying them, but the said Imam Bashar did not opt to report on the day for the reasons best known to the prosecution rather it was on 24.02.2020, when his statement under section 161 Cr.P.C. was recorded and thereafter he was produced before the court of Judicial Magistrate for recording his statement under section 164 Cr.P.C. The prosecution is yet to explain that why the statement of Imam Basher was not recorded on the day when he was allegedly

shown present at the time of police encounter and such delayed statement loses its worth and it favours the persons charged, as is held in case titled "Attaullah Vs the State (PLD 2019 Balochistan 75).

"According to settled norms of justice in a criminal case when section 161 Cr.P.C. statement is delayed; such evidence may not be given that sanctity as is generally given to the evidence of a witness whose statement has been recorded promptly soon after the occurrence."

9. 7. Though while reporting the matter the complainant did not specifically charged the accused who killed the deceased and injured the constable rather it was after two days of the occurrence when the statement of Imam Bashir was recorded, where specific roles were attributed to Sabir Nawaz and Noor Tiaz, this deviation by the eye-witness from the report makes the case of the petitioners arguable for the purpose of bail, even otherwise the petitioners were shown arrested from the spot and are saddled with vicarious liability, which cannot be determined at this stage, rather their involvement in the episode can best be determined by the trial Court after recording pro and contra evidence. In case titled "Ameer Bakhsh Vs the State and another" (2019 P Cr.LJ Note 145), wherein it is held that:

"It is settled law that vicarious liability of the accused is to be determined by the learned trial court after recording evidence. Reliance is placed on the case of Basharat Hussain v. Ghulam Hussain and others (1978 SCMR 357) wherein the august Supreme Court of Pakistan refused to interfere with the order of this Court granting bail to accused person in a case who had held the deceased to facilitate the murder by the co-accused."

8. Though it was argued with vehemence that the spot arrest of the petitioners and recovery of arms from their possession leaves no room to hold them vicariously liable and that even at bail stage their involvement in the tragedy can be determined. This Court cannot accede to the submissions so advanced, as this is admitted on record that the place of occurrence is the village of all charged and their presence can be interpreted either way, so this Court refrains to comment upon this aspect of the case as it may prejudice the case of either side. As I am seized of the bail matter, so tentative assessment is warranted at bail stage with strong dislike to deeper appreciation, so after assessing tentatively the petitioners have been succeeded in making out a case for bail being one of further inquiry.

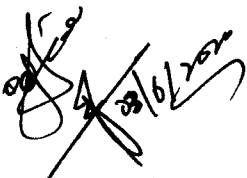
9. For what has been discussed above, this bail application is allowed and the accused / petitioners are admitted to bail subject to furnishing bail bonds amounting to Rs.2,00,000/-(two lacs), with two sureties each in the like amount to the satisfaction of Illaqa Judicial Magistrate/ MOD.

Above are the reasons of my short order of the even date.

Announced:
Dt: 07.05.2020
Azam/P.S



JUDGE



(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah.