

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.160-A/2017

JUDGMENT

Date of hearing.....17-05-2017.....

Petitioner (s)... (Sher Afzal etc) by M/S Ghulam
Mustafa Khan Swati and Saeed
Ahmad Shah Mashadi, Advocates.

Respondent (s)..... (The State etc) by M/S and Shad
Muhammad Khan, Advocates.....

SYED MUHAMMAD ATTIQUE SHAH, J.-

Accused-petitioners Sher Afzal and Munawar alias
Boi, after having been refused bail by the learned
lower Court in case FIR No.21, dated 11.04.1992
under sections 302/34 of Pakistan Penal Code, 1860,
registered at Police Station Banna Allai, District
Battagram, have approached this Court for the same
relief by filing the instant bail petition.

2. The allegation against the accused-
petitioners, as reveals from the report of Muhammad

Ibrahim son of Muhammad Hassan Khan, complainant is that they both in furtherance of their common intention committed *Qatl-i-Amd* of Muhammad Hassan Khan, father of complainant on 10.04.1992 at 0300 hours in village Shalai by firing at him.

3. Arguments of the learned counsel for the parties heard and the record perused with their valuable assistance.

4. Perusal of record would reveal that no doubt, the present accused/petitioners are directly charged in the FIR by the complainant for committing *Qatl-i-Amd* of his father but at the same time, complainant is not an eyewitness of the occurrence and the report lodged by him before the police at his home after delay of about twenty five hours is based on the information furnished to him by Chan Sair. Though the said Chan Sair has been shown as an eyewitness of the occurrence in the F.I.R. but the role of firing attributed to both the accused/petitioners in the commission of alleged offence by the said witness Chan Sair and the complainant, would be subject to scrutiny at the trial, especially when postmortem of the deceased has not been conducted. Moreover, the site plan is also not in support of the prosecution case.

Admittedly, nothing incriminating has been recovered from the accused/petitioners. Moreover, at the moment, no direct or circumstantial evidence is available on the record connecting the accused/petitioners with the commission of alleged offence. The fact that the accused/petitioners took the police party to the place of occurrence cannot upset the case of the accused/petitioners for grant of bail to them, as the same was already known to the prosecution. There is also cross version of the occurrence lodged by the accused party vide FIR No.22 against Shoaib Khan, brother of the present complainant. In peculiar facts and circumstances of the case in hand, the only ground which could come in the way of the present accused/petitioners is their long standing un-explained abscondance. But, it is by now settled that mere absconsion on the part of an accused would be not sufficient when otherwise a case for bail in view of the peculiar facts and circumstances of that particular case is made out in his favour. In this regard, reliance can be placed on **Mitho Pitafi's case (2009 SCMR 299)**, **Ehsanullah's case (2012 SCMR 1137)**, **Ikram-ul-Haq's case (2012 SCMR 1273)** and **Qamar alias Mitho's Case (PLD 2012 SC 222)**. Thus, this Court considers that in view of facts and circumstances

referred to above, a case of '*further inquiry*' into the guilt of the accused/petitioners is made out in their favour, as contemplated in subsection 2 of section 497 Cr.P.C.

5. The observations of this Court rendered hereinabove, would not affect the case of the accused/petitioner during the trial, in any manner whatsoever.

6. Consequently, this bail application is accepted and Sher Afzal son of Kareem Dad and Munawar alias Boi son of Kareem Dad, accused-petitioners are admitted to bail, subject to their furnishing bail bonds in the sum of Rs.100,000/- (Rupees one lac), each, with two sureties each in the like amount, to the satisfaction of the *Illaq*a/Duty Magistrate, Battagram.

Dt.17-05-2017.

J U D G E

M.Saleem/*