

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

Cr. Misc: B.A No. 114-B of 2022.
Haji Sher Alam and another
Vs
The State & another.

JUDGMENT

Date of hearing: 28.03.2022.

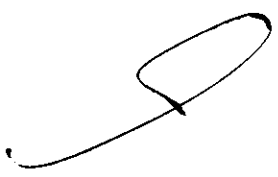
For petitioners: M/s Muhammad Rashid Khan Dirma
Khel and Muhammad Ashraf Khan
Marwat Advocates.

For complainant: Mr. Anwar-ul-Haq Advocate.

For State: Sardar Muhammad Asif, Asstt: AG.

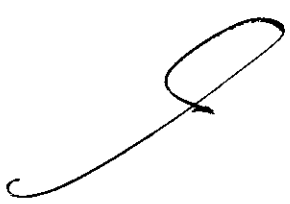
SAHIBZADA ASADULLAH, J.- Haji Sher Alam Khan and Haji Sharif Ullah Khan, the petitioners herein, after having been involved and arrested in the case FIR No. 484, dated 11.11.2015, under sections 302/34 PPC of Police Station, Ghazni Khel, District Lakki Marwat, had applied for their post arrest bail before the lower court, which was dismissed by learned Additional Sessions Judge-III, Lakki Marwat, vide order dated 09.3.2022 and, now, they have filed the instant application through their

counsel for the same relief before this Court.



2. Brief facts of the case are that on 11.11.2015 at 22:15 hours complainant Aleem Khan in presence of dead body of his relative Muhammad Faizan reported the matter at RHC Tittar Khel to the effect that on the eventful day he and his relative Muhammad Faizan were present in Baithak owned by Muhammad Faizan, situated at Tittar Khel, when Muhammad Faizan contacted accused Haji Sharif Ullah alias Shafi through cell phone and discussed money matter with him. Sharifullah invited him to his house for receiving the money. Both the complainant and deceased started in a motorcar towards Sharifullah. Complainant de-boarded from the motorcar while deceased went near the Baithak of Sharifullah. Headlights of the motorcar were on. At about 21:30 hours accused Sher Alam and an unknown accused duly armed with Kalashnikovs came out from the Baithak and started firing at the deceased Muhammad Faizan, with which he got hit and died on the spot. Initially the complainant charged accused Sher Alam and an unknown accused, however, on the following day the complainant introduced the unknown accused as Sharifullah. Later on the

complainant recorded his statement under section 164 Cr.P.C before the learned Illaqa Magistrate, where he resiled from the contents of report, he made and stated that he had not seen the occurrence, but charged the accused on the instruction of father of deceased.



3. I have heard arguments of learned counsel for petitioners, learned Assistant Advocate General for the State and learned counsel for the complainant and with their able assistant the record was gone through.

4. It was on 11.11.2015 when the deceased was done to death and the matter was reported by the complainant Aleem Khan, where the petitioners were charged for the death of the deceased. The investigating officer visited the spot and on pointation of the complainant prepared the site plan. During spot inspection from the place assigned to accused Sharif Ullah, 19 empties of 7.62 bore were taken into possession and from that of the accused Sher Alam, 35 empties were secured. It is pertinent to mention that from inside Baithak of the accused/ petitioners, the investigating officer recovered 17 empties and a spent bullet.

5. It is interesting to note that the complainant

Aleem Khan submitted an application for recording his statement under section 164 Cr.P.C, before the court of Judicial Magistrate, which was allowed and his statement was recorded on 14.12.2015, where he did not stick to his report rather he explained the situation in a different manner. It was on the following day that the investigating officer recorded statements of one Sifat Ullah and Hidayat Ullah who introduced themselves as the eye witnesses of the incident.


6. The investigating officer visited the spot and prepared site plan on pointation of the complainant, but no place was assigned to the later introduced witnesses. It was the high ups in the hierarchy that the investigating officer was directed to add their points in the site plan, wherefrom they saw the incident.

7. As in the instant case discrepancies are apparent on surface of record so this court is under obligation to take into consideration the same coupled with the statement recorded by the complainant before the court of Judicial Magistrate and the later appearance of the witnesses whose statements were recorded on the following day of the incident. There is no denial to the

fact that the complainant did not mention the presence of the eye witnesses at the time of incident and even he in his report mentioned that soon after the incident he ran away from the spot and the dead body was shifted to the hospital by the relatives. He further disclosed in his report that on reaching to the hospital he reported the matter. The source of identification was mentioned by the complainant the headlights of the motorcar, but the distance wherefrom the complainant allegedly witnessed the incident has been given as 1430 feet, wherefrom such a long distance the identification of the accused is still a bagging question. His coming down from the car at such a considerable distance makes his presence doubtful at the place of incident.

8. This court cannot lose sight of the fact that the complainant did not stick to his stance and as such he was permitted to record the statement under section 164 Cr.P.C which is still holding the field, though proceedings under section 182 P.P.C are still under progress against the complainant. The record reveals that the empties were not recovered only from the street, where the incident occurred, rather 17 empties of 7.62 bore were collected

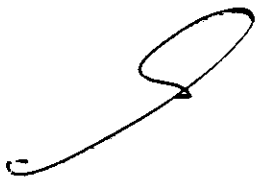
from inside the Baithak with a spent bullet. The recoveries from the Baithak has provided a twist to the prosecution case and even a 9 mm bore pistol with a stuck empty was recovered from the body of the deceased.



9. True that at bail stage deeper appreciation is not warranted and only tentative assessment is to be made, but equally true that bail applications cannot be heard and decided in a vacuum, rather the courts seized of the record must go through the record of the case, though tentatively. The benefit of doubt if arises has always been considered by the apex court in favour of the accused charged even at bail stage. Reliance is placed on case titled, “Syed Amanullah Shah Vs. The State and another” (PLD 1996 SC 241), wherein it is held that:

“So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail

then in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law.”



In another case titled “Muhammad Faisal Vs. the State and another” (2020 SCMR 971) it has been held that:

“The accumulative effect of all these facts and circumstances create doubt regarding truthfulness of prosecution version. It is established principle of law that benefit of doubt can be extended at bail.”

10. It was stressed time and again that one of the petitioners namely Haji Sharifullah misused the interim relief granted in his favour, time and again and that he jumped up the bail granting order. It was further submitted that this misconduct on the part of the petitioner cannot be tolerated as it undermines the authority of the court and adds to its disrespect. I am too concerned with what the learned counsel submitted but at present keeping

in view the attending circumstances of the present case, I deem it hard to bifurcate the case of the petitioner Sharifullah on that score alone. However, keeping in view the conduct displayed I see the only alternative to burden him with the burden of heavy bail bonds and in case of repetition of his previous conduct either this or the learned trial court would be at liberty to recall the bail granting order. As the petitioners have been succeeded in making out a case for bail, the instant bail application is allowed and the petitioners admitted to bail subject to furnishing bail bonds to the tune of Rs.9,00,000/- (rupees nine lac) each with two sureties each in the like amount to the satisfaction of the Illaqa Judicial Magistrate/ MOD. They shall be released forthwith if not required to be detained in connection of any other criminal case.

Needless to mention that the observations rendered above are tentative in nature which shall not influence the mind of the learned trial Judge.

Announced.

28.03.2022

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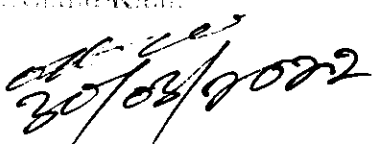
JUDGE

(S.B)

Hon'ble Mr. Justice Sahibzada Asadullah.

30 MAR 2022


Sahibzada Asadullah


28/03/2022