

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

Cr.Misc.BA No.359-P/2015

Date of hearing: **03.04.2015**

Appellant (s) : Bakht Zada by Malik Amjad Inayat, Advocate.

Respondent (s) : Mst. Hamida complainant by Mr. Khalid Tanveer Rohaila, Advocate, and the State by Mr. Waqar Ahmad, AAG.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner

Bakht Zada, being abortive to get the concession of bail from two Courts below, through this further application seeks the same concession from this court in case FIR No.582 dated 10.09.2013, registered under sections 302/148/149 PPC, at Police Station Saddar Mardan, wherein he along with co-accused Jehan Noor, Irshad, Shamshad, Siraj and Muhammad Zada, is charged for committing the Qatl-e-Amd of Akbar Ali deceased with firearms on the basis of previous blood feud.

2. Arguments of learned counsel for the parties and learned AAG for the State heard and record perused with their able assistance.

3. It appears from the record that in her initial report, Mst. Hamida complainant, charged directly six accused including the petitioner for committing the murder of Akbar Ali deceased her brother-in-law, by attributing the role of firing to all the accused, however, she later on, in the site plan assigned the role of firing to absconding co-accused Irshad and Shamshad and charged the present petitioner for abetment by showing his presence on the spot duly armed with firearm. No crime empty has been recovered from the place of the petitioner as indicated in the site plan. When no overt act has been assigned to the petitioner, in the circumstances, whether the petitioner was present at the scene of occurrence and if at all he was, whether he shared common intention and abetted the offence, are the debatable questions to be answered by the prosecution during trial, however, at the moment these make the case of the accused/petitioner arguable for the purpose of bail. Guidance in this regard may be derived from unreported judgment of the apex court in ***Criminal Petition No.16 –P of 2015, titled, "Sahibzada Vs The State and another"*** decided on 11.03.2015. It is settled law that bail may not be refused merely on the ground that accused is directly charged in the F.I.R for a heinous offence, when otherwise, he is found entitled to concession of bail because any mistaken relief of bail, can be repaired by convicting the accused, if proved

guilty at the trial, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run.

4. For the reasons discussed above, this petition is allowed. Petitioner is directed to be released on bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

Announced.
03.04.2015

J U D G E

maintained that the learned Trial Court has the jurisdiction to entertain the suit and in case of

decision of issue of the jurisdiction in favour of the petitioners, after conclusion of trial, it would be respondent to suffer and she is ready to face the consequences of such scenario. He while supporting the impugned orders, sought dismissal of the instant petition.

5. Come what may, the issue raised, being a mixed question of law and fact, can properly be resolved, after recording pro and contra evidence of the parties by the learned Trial Court. In view of the above, the impugned orders of both the courts below are set aside and the matter is remanded to the learned Trial Court with the direction to frame a specific issue (qua) jurisdiction, if already not framed, to afford an opportunity to the parties for leading their evidence and then to decide the suit on merits in accordance with law. The learned Trial Court shall conclude the trial as early as possible, but not later than 4 months, on receipt of the record. Office shall ensure

