

PESHAWAR HIGH COURT, BANNU BENCH.

(Judicial Department)

BA No.456 -B of 2023

Irfan

Vs.

Adnan Khan and another.

JUDGMENT

For petitioner: **Mr. Muhammad Shoaib Khan**
Saduzai advocate.

For State: **Mr. Hafiz Muhammad Hanif Addl: A.G**

For respondent: **Mr. Abdul Nasir Khan Wazir advocate.**

Date of hearing **09.10.2023**

FAZAL SUBHAN, J.--- The petitioner Irfan, seeks his release on bail, in case F.I.R No. 301, dated 10.06.2023, registered under section 302/34 P.P.C, Police Station Basia Khel, District, Bannu.

2. It was on 10.06.2023, at 10:30 hours, that the complainant Adnan Khan along with dead-body of his brother Waseem Khan and friend Zafran, at D.H.Q, hospital, reported the matter that his brother Waseem Khan was on pillion, while his friend Zafranullah was driving the motorcycle, and he was riding on his own motorcycle, on their way to Nezam Bazar. Zafranullah and his brother were ahead at some distance, when they reached Branch road, Ismail Khoni Khel, accused Irfan, Hizbullah sons of Samiullah, duly armed with Kalashnikovs, were already present. Both on seeing brother of

complainant started firing at them, with the intention to cause their death, as a result thereof, his brother and Zafranullah were hit and fell down, while he due to fear stopped the motorcycle at some distance. Accused after commission of offence decamped from the spot. When he attended, both of them were already dead. Motive for the offence alleged to be altercation between his brother and accused some two days earlier.

3. The learned counsel for the parties alongwith Addl: Advocate General were heard and the record was gone through.

4. The record reveals that the occurrence took place at 19:25 hours, whereas the matter was reported at the D.H.Q, hospital at 21:30 hours, with the delay of 2 hour and 5 minutes, which has not been explained. As per site plan at the relevant time of occurrence deceased were travelling towards north side, while the complainant following them on his motorcycle, the petitioner was given point No.4 in the site-plan, which means the petitioner was on left side of the deceased, when allegedly they were fired, while as per post mortem report the deceased received injuries mainly on right side of their bodies, thus for the time being there is conflict between the ocular and medical evidence. The Investigating Officer during inspection of the spot recovered 22 crime empties, which were sent to the F.S.L and report thereof

reveals that all the empties were fired from one and same 7.62 mm bore weapon, and thus it is yet to be determined that as to whether both the accused have participated in the commission of offence or it is the job of one and the same person. Hence, the material available on record makes the case of petitioner one of further inquiry into his guilt. In case titled "Nazar Gul Vs the State and another reported in (2016 PCr. LJ 297), it was held that:

"Though similar role of indiscriminating firing has been attributed to the accused-petitioner as well as the absconding co-accused, but from the spot only five empties of .30-bore along with a spent bullet have been retrieved. As per the FSL report, all the five empties have been fired from one and the same .30-bore weapon which certainly raises a question as to whether the unfortunate act is the doing of one person or more. This factor alone takes the matter to one of further probe and in the process entitling the accused-petitioner to the concession of bail."

5. Though the complainant Adnan has alleged to have seen the occurrence, reporting that he was following the deceased on his motorcycle, but firstly, the matter was reported after delay of 2 hours and secondly the motorcycle whereupon he was following the deceased has not been produced to the Investigating Officer, hence, it is yet to be

determined during trial as to whether the complainant was actually present at the spot at the time of occurrence requires further inquiry. It is now well settled that bail application cannot be decided in isolation. For deciding bail application, assessment of available record has to be made to ascertain whether the allegation in the F.I.R and material collected during investigation do connect the accused of the case with the crime, because liberty of a person(s) cannot be curtailed due to bald assertion and if no connecting material is brought on record then benefit of doubt can be extended in favour of accused. Guidance in this respect can be derived from the case titled **"Fahad Hussain and another Vs State through Prosecutor General Sindh" (2023 SCMR 3645)**, wherein it is held that.


"It is well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at bail stage, if the facts of the case so warrant."

6. Thus, while applying the same parameters, the petitioner has been succeeded in making out a case. Resultantly, this petition is allowed and the accused/petitioners are directed to be released on bail subject to furnishing bail bonds in the sum of Rs:1,00,000/- (one lac) each with two sureties, each in the like

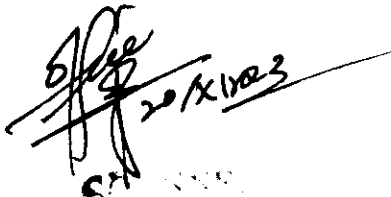
amount, to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

7. Needless to mention that the observations so rendered are tentative in nature and shall not influence the mind of the trial Court. Above are the detailed reasons of my short order of the even date.

Announced:
Dt: 09.10.2023
Azam/P.S


JUDGE

(S.B)
Hon'ble Mr. Justice Fazal Subhan.


20 OCT 2023
