

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**

(Judicial Department)

Cr.M BA No.96-A/2020

Aurangzeb Vs the State

Date of hearing. 24.02.2020
Petitioner(s) by: Mr. Asif Masood Tanoli,
Advocate.
Complainant by: Malik Amjid Ali, Advocate.
State by: Sardar Muhammad Asif,
AAG.

JUDGMENT

AHMAD ALI. Through the instant petition, petitioner Aurangzeb alias Billu S/o Lal Akbar, seeks his post arrest bail in case FIR No. 28 dated 13.05.1991 u/s 17(3) Haraba/512 Cr.P.C, P.S. Doonga Gali, Abbottabad.

2. Brief facts of the case are that Muhammad Anwar S/o Haji Ameer Alam reported the matter to the local police of Police Station Doonga Gali, Abbottabad that he runs carry van bearing No. ADB-1875 Model 1990 as taxi. On the preceding night at about 10:00 PM, he was present at Lari Adda, Abbottabad. Meanwhile four unknown persons booked him from Abbottabad to village Riala in lieu of Rs.

400/- as rent. He took them to Riala where, after staying for a while, they returned towards Abbottabad. In the way, they forcibly took him to Jungle where the complainant was tied with a tree and wrapped a chaddar on his mouth. All the four accused took away the Suzuki carry van along with registration book, driving license and CNIC of the complainant. Complainant was untied by the locals a Fajar Azan Vela who brought him to police station for the registration of FIR, hence the instant case.

3. I have heard arguments of learned counsel for the parties, learned AAG for the State and have gone through the record.

4. Perusal of record reveals that the accused/petitioner was not named in the FIR, rather the complainant identified him through his photograph, but the accused/petitioner could not be arrested in the instant case till 11.11.2019. Pertinent to mention here that the statement under Section 164 Cr.P.C of the complainant was recorded on 11.12.2019, after about 28 long years of the occurrence wherein he charged the accused/petitioner along with other co-accused, however, even after arrest of the accused/petitioner and his sufficient

police custody, no incriminating recovery could be effected from him nor he lead the police party to the place of occurrence for the purpose of pointation.

5. Moreover, though the complainant was able to identify the accused/petitioner in the identification parade conducted by the learned Senior Civil Judge, Abbottabad on 26.11.2019, but identification of the accused/petitioner after lapse of about 28 long years also creates a question which can only be resolved after recording prosecution evidence. The offence for which accused/petitioner stands charged, falls under the prohibitory clause of Section 497 Cr.P.C. but except mere statement of the complainant, there is no incriminating evidence against the accused/petitioner to prima-facie connect him with the commission of alleged offence at this stage.

6. Besides, the record is silent regarding previous history of conviction or involvement of petitioner in such like cases. Petitioner is behind the bars since his arrest and no more required to the local police for further investigation

7. So far as, contention of the learned AAG in respect of long abscondence of the accused-petitioner is concerned, same will hold no field in the

circumstances, when case of the accused, squarely falls within the ambit of Sub-Section (2) of Section 497 Cr.P.C, calling for further probe. It is by now settled that in any case falling within the above ambit; the grant of bail must be considered as a rule and refusal thereof is an exception. However, in the instant case, no exceptional circumstance exists to refuse bail to the accused, when the other circumstances, tentatively are in his favour. Reliance can be placed on case laws reported in **2018 MLD 125, PLJ 2017 SC 115, 2016 SCMR 1520, 2016 SCMR 1593, PLD 2012 SC 222, 2015 P.Cr.L.J 1005 & 2012 YLR 2090.**

8. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in **2008 SCMR 807 “Haji Muhammad Nazir Vs State”.**

9. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of

bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in **(1996 SCMR 1845)**.

10. For what has been discussed above and on tentative assessment of material available on file, a case arguable for the grant of bail is made out. Consequently, instant bail petition is allowed and the petitioner, named above, is admitted to bail provided he furnishes bail bonds to the tune of Rs.100,000/- (One lac) with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

Announced:
24.02.2020

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