

**Judgment Sheet**  
**PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
*(Judicial Department)*

**Cr.MB. No.167-D/2020.**

Muhammad Ashraf & another  
Vs.  
The State etc.

**JUDGMENT**

For Petitioner: **Mr. Saif ur Rehman Khan,**  
**Advocate.**

For State: **Mr. Adnan Ali, Asstt: A.G.**

For Complainant: **Muhammad Waheed Anjum,**  
**Advocate.**

Date of hearing: **29.5.2020.**

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**SAHIBZADA ASADULLAH, J.-** Being booked in case FIR No.424 dated 13.11.2018, registered under Sections 302/324//34 PPC at police station Parova, District D.I.Khan, accused/petitioners have approached this Court for their release on bail. Earlier, vide order dated 04.5.2020, they were declined bail by the Court of learned Judge MCAC/ Additional Sessions Judge/Duty Judge, D.I.Khan.

2. Brief account of the prosecution story, as disclosed in the FIR, is that on 13.11.2018, complainant Habib Ullah brought the dead body of his brother Gul Zaman and made report in the Emergency Room of Civil Hospital, Parova, to the effect that on the eventful day he alongwith his brother Gul Zaman, father Inayatullah,

Muhammad Hanif, Muhammad Rafique and Mehboob went to CRBC canal near Saifal No.3 within limits of Jhok Abdullah and were busy to function fan of the tractor, it was about 0730 hours, when accused Muhammad Ashraf, armed with 303 bore rifle, Dr. Ghulam Shabbir and Saeed, both armed with Kalashnikovs, came there and started firing at them, as result thereof, his brother Gul Zaman got hit and fell to the ground, while they escaped unhurt luckily; they tried to overpower the accused who succeeded to escape from the spot, however, the accused/petitioner threw his 303 rifle, which was picked up by the complainant. The injured succumbed to his injuries on the way to hospital in a motorcar. Besides the complainant, the occurrence was stated to be witnessed by his afore-named companions of the complainant. Motive for the offence was stated to be a dispute over lands. He charged the accused for *qatl-i-amd* of his brother and ineffective firing at him and his companions. On the report of the complainant, instant case vide the captioned FIR was registered against the accused.

3. The learned counsel representing the petitioners argued threadbare that the accused/petitioners are innocent and have falsely been involved in the case; that the petitioners were not present on the spot at the time of occurrence and were out of their village for

earning livelihood, but they have been made a scapegoat for ulterior motives; that no independent person has been cited as witness to support the prosecution version; that the co-accused Dr. Ghulam Shabbir has been acquitted by learned trial Court on 18.10.2019, therefore, on this score too, the case of petitioners requires further probe, being at par with the acquitted co-accused where the learned trial Court has disbelieved the entire prosecution evidence during trial of co-accused. The learned counsel for the petitioners further argued that once prosecution witnesses are disbelieved with respect to co-accused, then they cannot be relied upon in respect of other co-accused. He prayed that keeping in view the facts and circumstances of the case, accused/petitioners deserve to be enlarged on bail.

4. On the contrary, the learned Asstt. A.G. assisted by learned counsel for the complainant argued that the occurrence took place in a broad daylight, so no question arises with regard to mistaken identity, particularly when the parties are known to each other and the complainant has charged them with a specific motive. He further argued that while fleeing from the spot, the accused/petitioner threw his 303 bore rifle which was picked up by complainant and handed over to police and the same alongwith two empties of 303 bore recovered by the Investigating Officer during spot

inspection giving smell of fresh discharge was sent to the FSL where it was opined that the recovered empties were fired from same 303 bore rifle. He further argued that acquittal of co-accused is no ground to release the petitioners on bail, as the evidence against them is still to be analyzed by the trial Court. He also submitted that no credible evidence is available on the file which could justify plea of alibi taken by the petitioners. He lastly submitted that the material available on the file connects the accused/petitioners with the commission of offence falling within the ambit of prohibitory limb of Section 497, Cr.P.C., therefore, they do not deserve the concession of bail.

5. Arguments of learned counsel for the petitioners, the learned Asstt. A.G. assisted by learned counsel for the complainant heard and with their able assistance the record of the case was scrutinized from cover to cover.

6. On scanning of the record, it surfaced that the accused/petitioners have been directly charged for commission of the offence. It is a broad daylight occurrence, so no question of mistaken or false implication arises inasmuch as the parties are known to each other. Moreover, the investigating agency, during spot inspection, took into possession two empties of 303 bore rifle giving smell of fresh discharge and also

secured blood from the spot. The two empties recovered from the spot by the Investigating Officer and 303 bore rifle thrown by the accused/petitioner while decamping from the spot were sent to the FSL, where it was opined that the same were fired from the said 303 bore rifle. Furthermore, at the moment no evidence is available on the file which could suggest that on the day of occurrence, the petitioners were away from their village in connection with earning their livelihood.

7. So far as argument of learned counsel for the petitioners regarding acquittal of co-accused Dr. Ghulam Shabbir by the trial Court is concerned, suffice it to say that the acquittal of co-accused would not benefit the accused/petitioners for the reason that evidence collected by the investigating agency against the petitioners is yet to be analyzed by the trial Court.

In case titled **Habibullah Vs. Qadir Khan & two others (2018 P.Cr.L.J. Peshawar [Bannu Bench] 481)**, it was held that:-

*“True that in all cases co-accused have been acquitted at an earlier trial held before different courts, but whether acquittal of co-accused would entitle the accused/petitioners for concession of bail, who were arrested subsequently sitting on the fence, while watching the proceedings of their co-accused, who were arrested or surrendered earlier and faced the trial as an under trial prisoners. Answer is in negative, as evidence recorded in absence of accused/ petitioners in the case of their acquitted co-accused cannot be taken*

*into consideration, neither at bail stage nor during trial. Fate of the case of the accused/petitioners would be decided on the evidence recorded in their presence and believing or disbelieving of evidence is the exclusive domain of trial court, where it will form its own opinion after recording of evidence in presence of the accused/petitioners. It is not necessary that the trial court will come to same conclusion which was arrived at the trial of co-accused”.*

In this respect, reliance can also be made to the case law reported as **Akbar Said Vs. Moambar and another (2017 Cr.L.J. Peshawar Note 137).**

8. Besides the above, the petitioners remained fugitive from law for more than one and half year till their arrest on 20.02.2020. Needless to say that no explanation whatsoever is available on record which could justify this long abscondence.

It is settled law that fugitive from law loses some of the normal rights granted by the procedural and substantive law and noticeable abscondence disentitles the absconder to the concession of bail notwithstanding merits of the case, guidance can be gathered from the cases reported as **Awal Khan and others Vs. The State (PLD 1985 S.C. 402) and Raza Khan Vs. State (2013 MLD Peshawar-810).**

9. The available circumstances prima facie connect the accused/petitioners with the commission of the offence which squarely attracts the prohibitory limb

of Section 497, Cr.P.C. Thus I hold the accused/petitioners are not entitled to the concession of bail. Resultantly, this bail petition is dismissed.

10. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, shall in no way prejudice the proceedings before the learned trial Court where the case be decided on its own merits after recording evidence.

Announced.

Dt: 29.5.2020.

Kifayat/PS\*

**JUDGE**

(S.B)

*Hon'ble Mr. Justice Sahibzada Asadullah*