

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Cr.Misc. (BA) No. 1058-P/2015.

JUDGMENT

Date of hearing.....**14.07.2015**.....

Petitioner. (Nazar Gul) By Mr. Hussain Ali, Advocate.

Respondents. (State) By Syed Sikandar Hayat Shah, AAG, Assistant Advocate General and (Complainant) By Mr. Muhammad Ijaz Khan Sabi, Advocate.

QAISER RASHID KHAN, J.- Through the instant petition, the accused-petitioner seeks bail in case FIR No. 594 dated 17.07.2013 registered under Sections 302 / 324 / 34 PPC by Police Station Tehkal, Peshawar after being denied the said concession by the learned lower fora.

2. Briefly stated facts leading to the instant petition are that the complainant Amjad while reporting the crime at the Casualty of KTH alleged that a day before the occurrence a quarrel took place between his deceased brothers namely, Najeeb Khan & Kamal with the co-accused namely, Nazir & Bashir and for the redressal of grievances of the parties he alongwith his deceased brothers went to the shop of Zeeshan where the accused-petitioner alongwith his co-accused namely, Zeeshan, Nazir and Bashir duly armed with deadly weapons

were present and during conversation both the parties exchanged hot words and then the accused-party started firing at them and resultantly, his brothers were hit and died on the spot while the complainant escaped unhurt, hence the FIR *ibid*.

3. The learned counsel for the petitioner contended that the accused-petitioner is innocent and has falsely been implicated in the present case for ulterior motives; that no recovery whatsoever has been effected from the accused-petitioner; that the FSL report does not support the version of the complainant and that there is no directed or circumstantial evidence against the accused-petitioner on record to connect him with the commission of offence, hence the accused-petitioner is entitled to the concession of bail.

4. The learned AAG assisted by the learned counsel for the complainant opposed the bail petition on the ground that the accused-petitioner alongwith his co-accused have been directly charged by the complainant for the murder of his two real brothers. They next contended that the accused-petitioner was arrested by the local police after about two years of the occurrence when his bail before arrest application was turned down by the learned lower court and that is how he is *prima*

facie connected with the commission of the offence, hence, the accused-petitioner is not entitled to the grant of bail.

Arguments heard and the record perused.

5. As per the complainant's version, it was with a view to settle a quarrel having taken place between his deceased brothers namely, Najeeb and Kamal with the co-accused Nazeer and Bashir when the parties assembled at the shop of co-accused Zeeshan and it was there when during the course of discussion, due to rush of blood, the accused-party fired at the complainant party, resulting in the death of two brothers of the complainant on the spot.

6. At the bail stage this court cannot go into the deeper discussion on merits of the case. As such only a tentative assessment of the available record is to be kept in view while disposing of the present bail petition.

7. 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 alongwith 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.

8. Accordingly, this petition for bail is allowed and the petitioner is directed to be released on bail provided he furnishes bail bond in the sum of rupees two lac (Rs.2,00,000/-) with two sureties each in the like amount to the satisfaction of the learned trial Judge / Illaqa / Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

These are the detailed reasons for short order of the even date.

Announced:
14.07.2015.

J U D G E

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