

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(*Judicial Department*)

Cr.MBA.No.364-D/2017

Inamullah....Versus...The State and another

JUDGEMENT

Date of hearing: **15.12.2017.**

Appellant-petitioner by M/S Ahmad Ali Khan Marwat &
Muhammad Kamran Niazi Advocate.

Respondent By M/S Farooq Akhtar khan Advocate and Adnan
Ali Khan AAG for the State.

SHAKEEL AHMAD, J.- Inamullah son of Fatehullah has filed this petition for his release on post arrest bail in crime report No.188 dated 14.10.2017 of Police Station Kulachi, District D.I.Khan, wherein he is charged under Sections 302/34 PPC for the murder of Khalid, brother of the complainant.

2. The gist of the case, forming background of this case, is that on 14.10.2017 at about 2245 hours, the complainant Misal Khan reported the matter to the police that he alongwith his brother were coming back at night time on foot after attending marriage ceremony of Hikmatullah, at about 09:30 p.m. his brother Khalid Khan was going ahead of him, he was holding a torch, all of a sudden accused Inamullah son of

Fatehullah, Rafiullah son of Khizar Hayat while riding on one motorbike and Khizar Hayat son of Fatehullah and Aminullah son of Khizar Hayat on another motorbike, came behind them, cross the complainant and reached near to his brother, deboarded from the motorbikes and fired at him from their respective pistols with the intention to kill him, due to which he was hit and died on the spot. The complainant could do nothing being empty handed. After commission of offence the accused decamped from the spot. Motive as alleged in the FIR is dispute over womenfolk. The accused were charged for the commission of offence.

3. The accused was arrested on 06.11.2017. Vide order dated 20.11.2017, the learned Additional Sessions Judge-V, D.I.Khan declined bail to the petitioner, hence, this petition.

4. The learned counsel for the petitioner has argued that collective/general role of firing had been levelled to the petitioner and his other three co-accused regarding firing at Khalid and no specific injury had been attributed to the petitioner. Admittedly, no weapon was recovered from the possession of the accused during the investigation of this case. The FIR itself refers to previous dispute over womenfolk between the parties and therefore, a possibility of spreading the net wide by complainant party so as to falsely entangle the

petitioner cannot safely be ruled out of consideration at this stage. Four persons have been charged for firing at the deceased with pistols, but, only one empty was recovered from the spot, which shows that the assailant was not more than one. The postmortem report does not support the contention of the complainant. He lastly contended that the prosecution case squarely falls within the ambit of subsection (2) of Section 497 Cr.PC, therefore, the petitioner is entitled for bail.

5. On the other hand, the learned counsel appearing on behalf of the respondent/complainant argued that the petitioner and his other three co-accused have specifically been charged for committing murder of Khalid. He next argued that the accused were identified in the light of torch. He also argued that postmortem report, site plan and version of the complainant are consistent inter alia. He further argued that the deceased sustained four wounds and number of assailants were also four which is consistent within the version of the complainant. He next argued that occurrence took place near the pond and there is possibility that empties might have fallen into the pond. He lastly argued that the offence with which the accused is charged falls within the prohibitory part of Section 497 Cr.PC, therefore, he does not deserve the concession of bail.

6. From perusal of case papers, it is clear that deceased died due to injuries received by him by discharge of firearm injury on different parts of his body, which is supported by the ocular evidence as well as the postmortem report. The injuries received by deceased were sufficient to cause his death and thereby he died too. The number of injuries sustained by the deceased commensurate with number of accused who fired upon the deceased. Mere non recovery of more than one empty from the spot does not make the prosecution case one of further inquiry into the guilt of the petitioner. Deeper appreciation of evidence is not permissible at bail stage. Dispute over womenfolk can be motive for commission of offence. Presence of the petitioner on the spot alongwith other co-accused has been tentatively established from prosecution record. Co-accused are still at large. The petitioner is unable to make out a case of further inquiry into his guilt. Moreso, investigation has been completed and trial is likely to commence. In such a situation the Courts normally or ordinarily decline to grant bail in cases in which either Challan has been put in the Court and trial is likely to commence shortly or the trial has begun. The proposition lends support for the precedents of august Supreme Court in “*Mian Dad Vs. State*” (1992 SCMR 1448) and “*Said*

Akbar and another Vs. Gul Akbar and another” (1996 SCMR 931).

7. For the foregoing reasons, the petitioner is not found entitled to bail, hence, his petition being bereft of merit is dismissed. However, the prosecution is directed to submit challan against the petitioner within a fortnight and trial Court is directed to conclude the trial within five months from the date of receipt of case file.

Announced.
Dt:15.12.2017

J U D G E