

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH**

(Judicial Department)

**Cr. Misc: BA No.290-B of 2017.
Asif Iqbal
Vs
The State etc.**

JUDGEMENT/ORDER.

Date of hearing _____ 25.7.2017 _____

Appellant-Petitioner: **Asif Iqbal/Asif
Rehman By Mukhtiar Ali Khan Khattak,
Advocate.**

Respondent: **State By Shahid Hameed
Qureshi, Addl: AG,
Others By Mirza Ali Khan Khattak, Advocate.**

SHAKEEL AHMAD, J.- Through Cr. Misc: BA

No.290-B/2017, the petitioner Asif Iqbal son of

Asif Rehman seeks post arrest bail in case FIR

No.317 dated 27.6.2017 registered under sections

324/34 PPC at Police Station Karak.

2. The prosecution case as set forth in

the FIR are that the complainant namely Ahmad

Khan brought his injured nephew (Muhammad

Iftikhar Khan) in emergency room of KDA Hospital, Karak, who was not in senses and reported the matter to the police that he along with his nephew Muhammad Iftikhar Khan was going to see Malik Hamzullah to say Eid Mubarak to him, when they reached near the house of the said Malik Hamzullah, in the meanwhile accused Asif Iqbal, Javed Iqbal sons of Aya Gul, armed with Kalashnikovs, appeared, and on seeing them accused Javed Iqbal raised a Lalkara and asked Asif Iqbal to kill them. On this accused Asif Iqbal, who was armed with Kalashnikov, opened firing with the intention to kill them, as a result of which his nephew Muhammad Iftikhar Khan was hit and fell on the ground and lost his senses, luckily, he escaped unhurt. The motive as alleged in the FIR is dispute over property. The complainant charged the accused for attempting at their lives. The prayer of the accused/petitioner for bail was

declined by the learned Additional Sessions Judge vide order dated 15.7.2017, hence, this petition.

3. The learned counsel for the petitioner argued that the medicolegal report does not support the contention of the complainant. He further argued that though the accused is charged for indiscriminate firing at the complainant and injured but no empty was recovered from the place of occurrence. He further argued that the injury sustained by the injured is simple. He lastly argued that regarding the same incident a case FIR No.339 dated 27.6.2017 under sections 506/337-A(i)/148/149 PPC at Police Station Karak has been registered against the complainant party, which makes the prosecution case as one of further inquiry into the guilt of the accused/petitioner, therefore, he is entitled for the concession of bail.

4. As against that the learned counsel for the complainant vehemently contended that

though the nature of injury sustained by the injured is simple in nature, but it is on the vital part of the body i.e. scalp. The accused has specifically been charged in the FIR for the commission of offence. It is a broad daylight occurrence, therefore, there is no chance of mis-identification. He lastly argued that the offence for which the accused/petitioner is charged, hit by the prohibitory clause of section 497 Cr.P.C, therefore, the accused is not entitled to the concession of bail. He placed reliance on 2012 MLD 377 and 2015 PCrLJ 1409.

5. The learned AAG appearing for the State, supported the contention of the learned counsel for the complainant.

6. Arguments heard and record perused.

6. Perusal of the record reveals that the injured has sustained a lacerated wound on his scalp and the neurosurgeon described it to be simple. Though indiscriminate firing was made by

the accused with his Kalashnikov, but no recovery of empties was effected from the place of occurrence and a counter FIR has been registered against the complainant party by the brother of the accused Javed Iqbal vide FIR No.339 dated 27.6.2017. The case law quoted by the learned counsel for the complainant is out of context. Each criminal case is to be examined on its own facts and circumstances. At the moment, it is yet to be determined during trial, after recording pro and contra evidence, as to which of the two versions is correct, which makes the case of the petitioner arguable for the purpose of bail, hence, he is entitled to the concession of bail. Reliance is placed on the case **“Dr. Younas Vs. The State and another” (2016 P.Cr.L.J 1746)** and **“Muhammad Younas Vs. The State and another” (2010 P.Cr.L.J 807).**

7. Accordingly, the Cr. Misc: BA No.290-B/2017 is allowed and the accused is

admitted to bail, provided he furnishes bail bonds in the sum of Rs.1,00,000/- (rupees one lac) with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/ MOD concerned. The sureties must be local, reliable and men of means.

Announced.
25.7.2017

J U D G E

Ihsan*/-