

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr. Misc:BA # 286-B of 2017
Muhammad Jamil Vs: State etc:

JUDGMENT

Date of hearing _____ 06/9/2017

Appellant-Petitioner: **By Mr. Farooq Khan Sokari,**
Advocate.

Respondent: **By Mr. Sultan Mehmood Khan,**
Advocate.
State By Mr. Qudrat Ullah Khan,
AAG

SHAKEEL AHMAD, J.--- Through instant Criminal

Miscellaneous bail petition, the petitioner / accused

Muhammad Jamil s/o Muhammad Shereen r/o Kot Pusha

Ghoriwala Bannu seeks post-arrest bail in case F.I.R #

386 dated 09/9/2013, registered U/Ss- 302/324/148/149

PPC at Police Station , Ghoriwala District, Bannu.

2. The allegations against the petitioner / accused are that he along-with others during a “Jirga” proceedings opened indiscriminate firing on the complainant party due to which his opponents namely- Bakht Ali, Dost Ali, Ismail, Yousaf Khan and Wali Zaman were hit and lost their lives. Earlier, the co-accused of the instant case namely-Wahab, and the accused Zahidullah charged in the counter case vide FIR Mo. 387 dated 09.9.2013 registered U/Ss- 302/324/34 PPC at PS Ghoriwala District Bannu were allowed bail by this court vide order dated 14.10.2013 on the ground that both the parties are involved in cross-cases, and it is yet to be determined as to who is the aggressor and who has been aggressed upon, which fact brings both the cases for further inquiry keeping in view the cross version of the incident put forth by each of the parties.

3. The learned counsel for the petitioner / accused argued that not only the co-accused namely-

Wahab having identical role has been allowed bail, but the accused Zahidullah charged by the accused party in counter case was also released on bail by this court. He next argued that on principle of consistency the accused / petitioner deserves the concession of bail. He lastly argued that mere abscondence and commencement of trial would not dis-entitle the petitioner from the concession of bail.

4. As against that the learned counsel representing the complainant argued that after commission of offence the accused remained fugitive from law and was arrested on 25.6.2017. He was declared as proclaimed offender; he further argued that the trial has commenced and statements of the PWs are being recorded, therefore, petitioner is not entitled to be released on bail.

5. The learned AAG representing the State admitted that a cross version vide FIR No. 387 dated

09.9.2013 registered U/Ss-302/324/34 PPC at PS Ghoriwala District Bannu has been recorded against the complainant party and the role of the petitioner is not distinguishable from that of the co-accused namely- Wahab who has been released on bail by this court vide order dated 14.10.2013.

6. Arguments heard and record perused.

7. Perusal of the record reveals that the co-accused namely-Wahab having identical role has been released on bail by this court vide order dated 10.2.2013 and not only this the accused Zahidullah charged in the cross case was also allowed bail in Cr: Misc: BA No.188-B of 2013. The Hon'ble Court while releasing the accused on bail held that in both the cases the time of occurrence, venue of crime and parties are the same, and that it is yet to be determined as to who is the aggressor and who has been aggressed upon, which brings both the cases for further inquiry in view of the cross version of the incident

put forth by each of the parties. By now it is a settled law that in such cases bail is granted on the ground of further inquiry, as it gives rise to a question as to which party is aggressor and who has been aggressed upon. In this respect reliance is placed on case titled ***Shoaib Mehmood Butt V. Iftikhar-ul-Haq and 3 others (1996 SCMR 1845)*** wherein it was held as under:-

"In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party it is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed against."

8. The role attributed to the petitioner is at par with the co-accused Wahab who has already been released on bail by this Court; therefore, the petitioner is also entitled for equal treatment having one and the same role in the same case. The learned counsel for the complainant is unable to distinguish the role of the present petitioner from the role of the co-accused Wahab, who has already been granted post-arrest bail by this court. Reliance is placed on the case titled *Gul Muhammad and others Vs The State and others 2010 P.Cr.L.J 340, Nasib Khan Vs. The State and another 2017 P.Cr.L.J Note-17.*

9. Mere abscondence or commencement of trial is no ground to refuse bail to the accused. In this respect reference can well be made on a case titled Safdar Hussain Vs State etc: reported in *2017 PLJ 115*, wherein it was held as under:-

"So far as abscondence of petitioner for almost four years is concerned, suffice it

*to observe, mere abscondence or
commencement of trial is no ground for
refusal of bail, if the petitioner is entitled
to the same on the ground of further
enquiry."*

10. For what has been discussed above, this bail petition is allowed and consequently, the petitioner Muhammad Jamil is admitted to bail in the above mentioned criminal case subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (two Lacs) with two sureties each in the like amount to the satisfaction of trial court.

Announced.
06/9/2017

J U D G E

Imran Steno