

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. M No. 437-A of 2015

JUDGMENT

Date of hearing.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- All the four accused/petitioners, Farhat Naseem, Muhammad Ibrahim, Hakim Khan and Muhammad Sajid Khan, are seeking post arrest bail in case vide FIR No.250 dated 25.04.2015 under Sections 302/148/149 PPC and 15 AA KPK, Police Station Sarai Saleh, Haripur, which was lodged on the report of Mughal Khan, complainant/respondent No.2, who reported to the SHO P.S Sarai Saleh on the spot at 2230 hours on 25.04.2015 about

the *Qatl-i-Amd* of his nephew namely Adil Khan by the accused/petitioners and other two absconding co-accused namely Waseem and Mansoor by effectively firing at the deceased with their fire arms at 9.15 P.M. The complainant showed his presence on the spot while driving his Double Cabin vehicle and his close relative and eye witness Khurram Khan accompanying him in the vehicle, while deceased Adil Khan following him in his own motorcar. According to the complainant, he recognized the accused/petitioners and the absconding co-accused in the light of electric bulb and also moon light, and cited old blood feud as motive for the offence.

2. The Postmortem examination of the deceased revealed three fire arm entry wounds of 2 ½ and 2 cm with corresponding exit wounds on the head and chest of the deceased. During

investigation, the I.O inspected the spot, and collected blood from the front seat of vehicle of the deceased through cotton and also recovered large number of crime empties of both 12 bore SG and 7.62 MM bore from the spot. The blood stained cotton along with blood stained garments of the deceased were sent to FSL, and the chemical examiner reported that human blood was detected on the said articles. A total of 24 crime empties of 7.62 MM bore along with one 7.62 MM bore SMG rifle, allegedly, handed over to the I.O by the accused/petitioner Muhammad Ibrahim, after his arrest, on 23.05.2015, were sent to the fire arms expert, but the result received there-from was in the negative. Accused/petitioners Sajid, Farhat Naseem and Muhammad Ibrahim were arrested on 04.05.2015, whereas accused/petitioner Haji Hakim Khan was arrested on 22.05.2015. The I.O had also secured two

electric bulbs from the spot, but the load-shedding schedule procured from the Wapda Authorities showed load-shedding of Industrial feeder from 2100 to 2200 hours in the report dated 14.05.2015. Moreover, on the application of accused/petitioner Sajid Khan the I.O also obtained record showing tour programme of department of Mathematics of Hazara University, Havelian Campus, on the day of occurrence; and affidavits of staff of the department showing presence of the accused/petitioner with them from 8.00 AM to 1015 P.M. After completion of investigation, complete challan against the accused/petitioners and challan under Section 512 Cr.PC against the two absconding co-accused has been submitted on 05.07.2015.

3. Arguments of the learned counsel for the accused/petitioners, learned Assistant Advocate General

assisted by learned counsel for the complainant/respondent No.2 heard, and record perused.

4. The learned counsel for the accused/petitioners argued that six persons of a family have been charged for 3 fire arms injuries on the deceased, allegedly, caused at night time but the accused, nevertheless, recognized by the complainant and the so-called eye witness namely Khurram Khan, a close relative of the complainant and the deceased, in the moon light and light of the electric bulb, which, according to the learned counsel, was a distant possibility as neither there was full moon on the day of occurrence nor the place where the electric bulb was on at the time of occurrence has been shown in the site plan, thus raising serious doubts about identification of the accused by the complainant and the so-called eye witness, who were reportedly proceeding

ahead of the deceased in the vehicle. The learned counsel contended that in such darkness it was next to impossible for the complainant to specify those parts of the body of the deceased where he sustained fire arms injuries. The learned counsel further pointed out that statement under section 161 Cr.PC of Khurram Khan was recorded by the I.O twice on the same day i.e. 26.04.2015; but in his first recorded statement the said Khurram Khan said nothing about his witnessing the occurrence. The learned counsel further pointed out that not only accused/petitioner Sajid has furnished proof regarding his plea of *Alibi* but the negative report of the fire arms expert about the crime empties and the alleged weapon of offence recovered from accused/petitioner Muhammad Ibrahim, would also make case of the accused/petitioner that of further inquiry.

5. The learned Assistant AG assisted by learned counsel for the complainant/respondent No.2, on the other hand, contended that the accused/petitioners along with absconding co-accused were charged by name for the *Qatl-i-Amd* of deceased Adil Khan and being co-villager of the complainant and the eye witness, there could possibly be no doubt about their identification in the moon light and also in the light of electricity bulbs which were taken into possession by the I.O. The learned counsel further contended that three fire arm entry wounds on the body of the deceased suggested commission of the offence by more than one person, which receives support from the strong motive of previous enmity between the parties. The learned counsel maintained that plea of *alibi* could not be taken into consideration at the bail

stage, neither in depth discussion of merits of the case was desirable at this stage.

6. Be that as it may, the fact remains that six members of a family are charged for only three fire arm entry wounds on the deceased at night time, without assigning specific role in the FIR to any of the accused. No doubt, the load shedding schedule and plea of *alibi* by accused/petitioner Sajid are facts which are not that relevant at the bail stage; but once such grounds are taken by the defence, the I.O must probe in to such facts alleged during the investigation either to confirm or contradict the same. However, in the instant case, the I.O does not seem to have embarked on such an exercise, which was, indeed, essentially required for completion of investigation; thus leaving room for further inquiry. The negative report of the fire arms expert, non recovery of anything incriminating

from the other co-accused and no investigation to prove moon light on the day of occurrence and light of electric bulb (s) on the spot at the time of occurrence, would further render case against the accused/petitioners that of further inquiry.

7. Above all, the accused/petitioners are behind the bars since 04.05.2015 and 22.05.2015, respectively, while investigation in the case is complete as complete challan against them has been submitted on 05.07.2015, implying thereby that they are no longer required for the purpose of investigation, thus making the accused/petitioners entitled to the concession of bail, especially when bail cannot be withheld as punishment.

8. Consequently, on the acceptance of the application, the accused/petitioners are admitted to bail provided they furnish bail bonds in the

sum of Rs.100000/- each with two sureties
each in the like amount to the satisfaction
of Illaqa/Duty Judicial Magistrate, Haripur.

Announced.
28.09.2015

J U D G E