

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR**  
(Judicial Department)

**Cr.MBA No. 771-P/2021.**

**Sadiq Vs The State.**

**JUDGMENT**

**Date of hearing.** 17.05.2021.  
**Petitioner(s) by:** Mr. Shabbir Hussain Gigyani  
Advocate.  
**Complainant by:** Mr. Qaiser Zaman Advocate.  
**State by:** Mr. Muhammad Sohail AAG.

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**S M ATTIQUE SHAH, J:-**Through instant bail petition, petitioner Sadiq seeks his release on bail in case FIR No.337 dated 25.03.2016, registered under Sections 302/324/34 PPC, at Police Station Bhana Mari Peshawar, wherein he alongwith co-accused Yousaf Ullah are charged for indiscriminate firing at complainant party; which resulted into death of Qazi Khan (father of complainant Hizbullah) and their driver Shakoor Khan; while complainant escaped unhurt.

2. I have heard learned counsel for the parties and gone through the record.

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3. It is pertinent to mention that prayer of petitioner for his release on bail on merit has already been dismissed upto this Court vide order dated 11.05.2020 and; now he is seeking his release on bail through instant petition on medical ground.

4. The record reveals that during pendency of instant bail petition, an application (Cr.M No.42-P/2021), was filed on behalf of petitioner, for his examination through Standing Medical Board in order to determine gravity of his ailment; which was allowed with direction to Director General Health Khyber Pakhtunkhwa, to constitute a Standing Medical Board for examination of petitioner and pursuant thereto, petitioner was examined by Standing Medical Board and; submitted the following report:

***"that patient with history of back pain referring to lower limbs. He had sciatica for which surgery (Lamenectomy was done). He is complaining of pain and numbness in lower limbs. He needs special care for his back and spine. It is a genuine case. He should be under care of Neurosurgeon or spine surgeon."***

5. The ibid report has not provided that petitioner is suffering from such an illness, which is hazardous to his life; rather, it has only been mentioned that he needs special care


*Amir*

for his back and spine and he should be under the care of Neurosurgeon or spine surgeon. Though as per report of Senior Medical Officer posted at Central Prison Peshawar, his treatment is not possible inside the jail; however, the ibid report shows that petitioner was referred to Neurosurgery OPD, Khyber Teaching Hospital Peshawar for specialized treatment, meaning thereby that the jail authorities are taking proper care of the petitioner by producing him for his treatment before Neurosurgeon at KTH, Peshawar.

6. Moreover, as per record, petitioner after long abscondence of three years, obtained BBA from the competent Court of law on 10.12.2019 and; astonishingly, he did his surgery (Lamenectomy) in Pakistan Medical & Diagnostic Center Rawalpindi on even date i.e, 10.12.2019; meaning thereby that the plea of medical ground was available to him at that time and; subsequently as well, at the time of his post arrest bail before the learned lower Court and; before this Court too; but, despite that the petitioner did not seek bail on medical ground; rather, waited for the fate of his bail petitions so filed on merit and; when he failed to get his release on bail on merit; then, he applied for his release on medical ground in second round, therefore, instant petition is also not

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maintainable. Given, that under the law, bail could be granted to an accused on medical ground; provided if he could make out a case on such ground. However, as earlier discussed the ailment of the petitioner is not as such, which is either hazardous to his life or the same could not be treated from the jail, therefore, the discretion so available under the law could not be exercised in his favor. Besides, the case law so produced by learned counsel for petitioner is distinguishable; as it is nowhere mentioned in the report of Standing Medical Board that petitioner is suffering from a chronic or such a hazardous disease which is serious threat to his life or his detention in jail premises is dangerous to his life. Moreover, the jail authorities are producing the petitioner for his treatment before the concerned doctor without any fail. Therefore; instant bail petition is dismissed. However, Superintendent Jail is directed to provide the petitioner special care and also make arrangement for his examination by a doctor of his choice, as and when required, in accordance with law. Moreover, since trial against petitioner has already been commenced and; four witnesses have already been examined; while a few abandoned by the prosecution; hence, learned trial



Court in the circumstances, is expected to conclude the trial expeditiously.

***Announced:  
17.05.2021.***

***SM***  
**JUDGE**