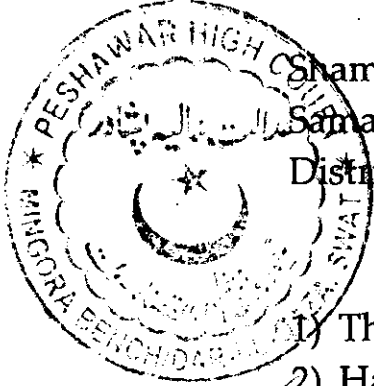


①

**BEFORE THE PESHAWAR HIGH COURT MINGORA**  
**BENCH / DAR-UL-QAZA SWAT**

Bail Application No. 336 of 2017



⑤

Shams ur Rahman S/o Amir Chaman Khan R/o Mohallah  
Saman Gul Kokarai, Tehsil Babozai, District Swat presently at  
District Jail Daggar as under trail prisoner.....**Petitioner**

**VERSUS**

- 1) The State.
- 2) Haider Ali S/o Shams ur Rahman R/o Langar Khail Kokarai,  
Tehsil Babozai, District Swat. (Complainant)
- 3) Mst. Khwadija widow of deceased Muhammad Farooq,
- 4) Muhammad Shah Khan S/o Shahzad Khan (Father of  
deceased),
- 5) Mst. Shah-e-Ezat Bibi wife of Muhammad Shah Khan  
(Mother of deceased) <sup>ALL 3<sup>rd</sup> & 4<sup>th</sup></sup> **R/o Manglor Tehsil Babozai**  
**District Swat** .....**Respondents**

**FILED TODAY**

**24 JUL 2017**

Additional Registrar

CASE FIR NO. 181 <sup>ALL 3<sup>rd</sup> & 4<sup>th</sup></sup> DATED 07-07-2016  
UNDER SECTION 302-324-148-149-337-A(I)(II) PPC 19-AA  
POLICE STATION: KOKARAI, DISTRICT SWAT

**APPLICATION U/S 497 (2) CR.PC, FOR THE RELEASE OF PETITIONER ON**  
**BAIL TILL THE FINAL DISPOSAL OF THE INSTANT CASE.**

Respected Sheweth:

1. That the accused / petitioner is malafidely charged by the police in the above tilted case and since then behind the bar. **(Copy of FIR is attached as Annexure "A")**
2. That the petitioner submitted bail application before the Additional Session Judge II Swat, which was turndown vide impugned order dated 15-07-2017. **(Copies of bail petition & order dated 15-07-2017 are attached as Annexure "B" & "C")**
3. That the respondents No. 2 is complainant while respondents No. 3 to 5 are Major legal heirs of the deceased, while they are not made a party in

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
*(Judicial Department)*

**Cr.M B.A. No. 336-M/2017**

**JUDGMENT**

Date of hearing: **16.08.2017.**

**Petitioner:- (Shams-ur-Rahman) by Hafiz Ashfaq Ahmad, Advocate.**

**Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Asstt. Advocate General.**

**MOHAMMAD IBRAHIM KHAN, J.** On his self-implication by forwarding an application under section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate Swat presented on 12.07.2016, it refers to certain facts of his involvement causing murder of Mohammad Farooq Khan. The Petitioner later realizing to be released on bail in case F.I.R. No. 181 dated 07.07.2016 being charged under sections 302,324,148,149, 337 (i) (ii) PPC and 19 A.A. registered at Police Station Kokarai District Swat.

**ATTESTED**

**Examiner**  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

2. His previous petition before the Court of learned Additional Sessions Judge-

II/Izafi Zila Qazi Swat was turned down vide impugned order dated 15.07.2017.

3. The occurrence pertains to happening on *Eid* day, the complainant Haider Ali who is son of the Petitioner was in injured condition accompanied by the corpus of Muhammad Farooq. At the time, when they were taking tea in their house, another brother-in-law by the name of Akbar Ali was also present, after a while on hearing noise, persons by the name of Amanullah, Javaid, Murad, Ishfaq, Sajjad and Mujahid Ali were present duly armed. They were hitting the door with their kicks and were calling the deceased Muhammad Farooq to come out. Complainant asked all those persons that they have no concern with him and they should leave that place. In the meanwhile, the deceased Muhammad Farooq came outside alongwith his son Muhammd Rafiq. All those persons started beating the deceased Muhammad Farooq with kicks and fists blows while the complainant and his brother/injured tried to rescue him. Out of

**ATTESTED**  
Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

the stick blows of all those persons, the complainant and his brother were hit on various parts of their bodies. In the meanwhile, Amanullah and Javaid started firing at Muhammad Farooq, who was hit and died there and then. Later the assailants left the place of occurrence and decamped.

4. Learned counsel for the Petitioner referred to PLD 1962 Supreme Court 502 "Syed Ali Bepari vs Nibaran Mollahand others" and 2016 SCMR 18 "Zaigham Ashraf vs the State and others" and in view whereof has taken the plea of right of self-defence, but on this score the Petitioner cannot be held entitled to be enlarged on bail, as this plea can only be taken in his statement to be recorded before the learned trial Court with strong evidence in this behalf.

5. Having heard arguments of learned counsel for the Petitioner and learned Astt: Advocate General for the State, record with their assistance gone through, whereas despite

service the complainant is not willing to appear before the Court and this being bail matter cannot be kept pending for indefinite period, therefore, the petition was taken up for hearing on merits.

6. It is almost clear that Petitioner Shams-ur-Rahman was not given any effective role in the First Information Report. For an afterthought to involve himself, he has narrated his own version in application under section 164 Cr. P.C. Later this Petitioner was produced before the learned Judicial Magistrate who even recorded his volunteered confessional statement. At the end of confessional statement he himself being an old man has tried his level best to save the skin of his son Mujahid Ali and has taken the burden to kill the deceased Muhammad Farooq. It gives a smell that the confessional statement has been an afterthought to screen off the real offender from the scene who is his own son. The crime weapon pistol was also handed over by the Petitioner to the police, which was sent for its analysis and the

**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora/Dar-ul-Qaza, Swat.

Forensic Science Laboratory Report has confirmed that the crime weapon has been used in the commission of offence. Thereby in all probabilities, the Petitioner Shams-ur-Rahman himself being held responsible to bring home charges against him for the offence which may invite punishment falling under the prohibitory clause of section 497 Cr.P.C.

7. In view of the confessional statement of the accused/Petitioner coupled with recovery of the crime weapon and that too confirmed by the FSL report tentatively the Petitioner is linked in chain in his own prosecution.

7. In view of what has been stated above, this petition has got no force, which is hereby dismissed.

Announced  
Dt: 16.08.2017

  
JUDGE

Certified to be true copy

  
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat  
Authorized Under Article 37 of Constitution of Pakistan, 1973

File  
18/08/17  
W/R

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