

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

(Judicial Department)

BA No.109 -A of 2017.

Faisal Khan &3 others
Vs
The State & Amanullah Khan.

JUDGMENT

Date of hearing _____ 24.03.2017 _____.

Appellant-Petitioner _____

Respondent _____

ISHTIAQ IBRAHIM, J.--- Accused/ petitioners seek their release on bail in case F.I.R No. 537 dated 24.12.2016 under section 302/324/148/149 P.P.C, Police Station Nawanshehr, Abbottabad.

2. The brief and relevant facts leading to the present petition are that Amanullah Khan (complainant) in injured condition accompanying the injured PWs Ehsan Ullah, Atta Ullah, Haji Ghulam Khan and dead bodies of Shahid Faheem and a passerby as well as injured Munsif Khan and an unknown

injured lady, reported the matter to the local police in Emergency room of ATH Abbottabad against the present accused /petitioners and co-accused to the effect that his father Haji Ghulam Khan and brother Attaullah were going towards mosque for offering Isha Prayers. At about 07.00 PM Faisal Khan came in Jeep and upon seeing the father and brother of the complainant took turns with speed and started altercation with the father of the complainant. On hearing hue and cry, complainant also rushed towards his father. Meanwhile Shahid Faheem Khan and Habib Ullah Khan also reached at the spot. Sohrab Khan, Sajawal Khan, Murad Khan, Babar Khan, Safdar Khan alongwith 4/5 unknown persons armed with firearms came to the spot. On seeing them, Faisal Khan also took out his firearm and they all started indiscriminate firing on the complainant party as a result of which complainant sustained injury on this left shoulder, while his father Ghulam Khan, brothers Ehsanullah, Atta Ullah, brother in law Shahid Faheem, an unknown male passerby, a female passerby and one Munsif Khan passerby sustained firearm injuries on different parts of their bodies. Shahid Faheem Khan alongwith one passerby

succumbed to injuries at ATH Abbotabad. Occurrence was stated to have been witnessed by complainant, his brother Ehsanullah, Habibullah Khan, Saifullah Khan, passerby persons and other people present at the spot. Motive for the occurrence was stated to be the previous altercation between Attaullah and Safdar on crossing of vehicle. On the basis of this report, present FIR was registered.

3. Arguments heard and record perused.
4. Perusal of the record reveals that regarding the same occurrence another F.I.R No. 538/2016 was registered by accused/ petitioner Sohrab Khan against the complainant party, for attempting at the lives of accused/ petitioner and others, wherein five persons including passerby sustained severe injuries on vital parts of their bodies. The time of occurrence in both the case FIRs is almost same, while place of occurrence and the parties are the same. It is a case of two versions arising from the same incident, which version is correct, is to be decided by the trial after recording evidence. By now it is settled that in such cases bail is to be granted on the ground of further inquiry, as it gives arise to a question, as to which party

is aggressor and which party is aggressed upon. Reliance is placed on case titled “Shoaib Mehmood Butt Vs Iftikhar-ul-

Haq and 3 others (1996 SCMR 1845), wherein it is held that:

16. 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 case-law 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. In the case of Fazal Muhammad v. Ali Ahmad (19)0 SCMR 391 in cross-cases the High Court granted bail to the accused on the ground that there was probability of counter-version being true as some of the accused had received injuries including a grievous injury on the head of one accused. It was held by this Court that in such circumstances the High Court was right in granting bail and no interference was

warranted, In the same context, reference can be made to the case of Mst. Shafiqan v. Hashim Ali and others (1972 SCMR 682).

5. Perusal of both the FIRs reveal that complainant of both the cases remained mute regarding damage caused to the other side and prima facie they have suppressed the real facts, which factum makes the case of accused/ petitioners one of further inquiry. Reliance is placed on case titled, **“Muhammad Zahid Umer Vs The State and another” (2016 SCMR 1246)**, wherein it has been held that:

“Prima facie, both the parties have given their own version qua the manner in which this incident took place. Chances of suppression of real facts by both the parties cannot be ruled out.”

6. Moreover, one party disclosed the factum of indiscriminate firing, while the other party attributed the role of firing to each accused. In the fateful incident, three persons have lost their lives, while others from both the sides have received injuries. At this stage, on tentative assessment of the record, doubt exists that by which accused the injuries have been caused to the injured as well deceased, in both the case

FIRs. In such a situation, the accused/ petitioners are found entitled for the concession of bail. Reliance is placed on case titled “Ali Sheheryar Vs the State(2008 SCMR 1448), wherein it is held that:

“However, on tentative assessment of the material on record for the purpose of grant or refusal of bail in murder case of cross-version, if some doubt is created about the injuries caused to the deceased as to who was responsible for the same, which of course, has to be determined by the trial Court on minute appreciation of entire evidence, the provisions of section 497, Cr.P.C. would be attracted and benefit of such doubt would be extended to the accused even at bail stage.”

7. It is also borne out from the record that all the accused in case FIR No.538 have been admitted to bail by the learned lower Court vide orders 07.02.2017 and 28.01.2017. It is settled principle of law that if one party is granted bail, the other party would also be entitled to the same relief in case of counter version. Reliance is placed on case titled, “Muhammad Shahzad Saddiqui, Vs The state and another” (PLD 2009 SC 58), wherein it is held that:

It is settled principle of law that if one party is granted bail, other party is also entitled to the same relief in case of counter-version. We may profitably quote the following observations made by this Court in Shoaib Mehmood Butt v. Iftikhar-ul-Haq and 3 others, (1996 SCMR 1845):--

"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 case law is almost settled that such cases are covered for grant of bail on the ground of further inquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reasons 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. In the case of Fazal Muhammad v. Ali

Ahmad (1976 SCMR 391) in cross-cases the High Court granted bail to the accused on the ground that there was probability of counter version being true as some of the accused had received injuries including a grievous injury on the head of one accused. It was held by this Court that in such circumstances the High Court was right in granting bail and no interference was warranted. In the same context, reference can be made to the case of Mst. Shafiqan v. Hashim Ali and others (1972 SCMR 682)."

8. The accused cannot be kept in jail as punishment merely on the ground that they are directly charged for an offence falling under the prohibitory clause of section 497 Cr.PC, because a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but no proper reparation can be offered for their unjustified incarceration, albeit, their acquittal in the long run. Reliance is placed on case titled "Zaigham Ashraf Vs the State and others' (2016 SCMR 18), wherein it is held that:

“9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground.”

9. Accordingly, this application is allowed. The accused-petitioners are admitted to bail provided they furnished bail bonds in the sum of Rs.5,00,000/-(five lac) with two sureties each in the like amount to the satisfaction of Illaqa/ Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

10. The above observations are only tentative in nature for disposal of this bail petition, which shall not influence the mind of the trial Court at the trial rather it shall record its own

findings on the basis of evidence to be recorded. The above are
the reasons of my short order of the even date.

Announced.

24.03.2017

Azam/P.S

J U D G E