

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
(Judicial Department)

**Crl. Misc. BA No.1677-P/2015**

Date of hearing: \_\_\_\_\_

Petitioner (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** This common judgment shall dispose of the instant bail petition, filed by petitioner Manzoor Hussain and connected Cr.Misc.BA No.1685-P/2015, filed by petitioner Farman Ullah, as both are arising out of one and the same FIR No.746 dated 15.08.2015, registered under sections 302/109/34 PPC and S.15 Khyber Pakhtunkhwa Arms Act, 2013, Police Station Mathra.

2. According to report of complainant Bukhari Shah, on the fateful evening petitioner Farman Ullah took his son Hassan Shah alongwith him in a motorcar; that on the report of fire shots in the vicinity at 9.30 p.m., he contacted petitioner Farman Ullah to inquire about his son, who disclosed their presence in LRH, Peshawar; that at morning, he alongwith his co-villagers went towards the

direction of firing, where he found the dead body of his son. On 20.08.2015, complainant in his statement under section 164 Cr.P.C. also charged petitioner Manzoor Hussain.

3. Arguments heard and record perused.

4. It appears from the record that petitioner Manzoor has not been named in the FIR, rather, he has been named by petitioner Farman Ullah in his statement under section 161 Cr.P.C., on the basis of which, complainant also charged him in his statement under section 164 Cr.P.C. Admittedly, as per ratio of judgments of the Apex Court in cases titled, **“The State Vs Syed Abdul Qayum” (2001 SCMR 14)** and **“Raja Muhammad Younas Vs the State” (2013 SCMR 669)**, under Article 38 of the Qanun-e-Shahadat Order, 1984, admission of an accused before police could not be used as evidence against co-accused. Besides, a 30 bore pistol as a crime weapon has been attributed to petitioner Manzoor, but on the one hand, the alleged pistol has not been recovered on his pointation as the same had been produced by one Ihsan Ullah before the I.O, while on the other hand, no FSL report in respect thereof is available on file. Besides, in absence of direct evidence qua murder of the deceased by petitioner Manzoor, pistol and crime

empties being corroborative pieces of evidence, evidentiary value of the same, is yet to be determined during trial alongwith other strong circumstances of the incident. In view of the above, reasonable grounds exist which require further probe into the guilt of petitioner Manzoor Hussain. Moreso, petitioner Manzoor Hussain is a regular student of B.SC (Hons) in Agriculture University of Peshawar as per record of the University annexed with the petition.

5. As regard the involvement of petitioner Farman Ullah, no doubt, he has been named by complainant in the FIR directly that it was he who on that evening took the deceased alongwith him in a motorcar, but in absence of any direct evidence regarding murder of the deceased by him, mere fact that the deceased was seen in his company by the complainant, by itself would not be sufficient to connect him with the commission of offence. Besides, the incident has been reported with a considerable delay on next day of the incident at 07.50 a.m. for which no explanation, much less plausible, has been furnished by the complainant. On tentative assessment of the material available on record, participation of petitioner Farmanullah in the commission of offence also needs further probe into his guilt.

6. For the reasons discussed above, I am inclined to exercise the discretion of bail in favour of the petitioner. According, both the petitions are allowed. Petitioners are admitted to bail, provided each one of them furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

**Announced**  
**12.10.2015**

**J U D G E**



