

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,

BANNU BENCH

(Judicial Department)

B.A. No.190 -B/2020.

**Noor Muhammad alias
Manoor and Wazir Rehman**

Vs.

Mst. Dil Shad Bibi and the State.

JUDGMENT

Date of hearing 07.05.2020.

Petitioner by: Mr. Imran Ali Shah advocate.

Respondent by: Mr. Umer Qayyum Khan advocate.

State by: Mr. Quadratullah Khan Gandapur Asstt: A.G.

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SAHIBZADA ASADULLAH, J.- The petitioners after having been booked in case F.I.R No 82 dated 09.03.2020, under section 302/404/34 P.P.C, 15 A.A, were arrested and after their arrest they applied for post arrest bail before the Court of Additional Sessions Judge-IV, Bannu, for their release on bail, which was regretted vide order dated 18.04.2020. Feeling aggrieved the petitioners approached this Court through the instant bail petition.

2. Brief facts giving rise to the instant bail application are that on 09.03.2020, complainant Mst. Dilshad Bibi, wife of Akmal Riaz brought the dead-body of her deceased son Murtaza Akmal to Civil Hospital, Bannu, and reported the matter to the local police, wherein she stated that yesterday i.e. on 08.03.2020, after *Isha vela*

she alongwith her son left their house to irrigate their lands, when reached to the place of occurrence, it was about 19.30 hours, the accused Manoor Khan and Wazir sons of Zar Gul were already present duly armed with pistols, on seeing the deceased the accused started firing to commit his murder as a result the deceased was hit, fell on the ground and succumbed to the injuries. The accused were identified in the torch light. After committing the murder of the deceased the accused took the Kalashnikov of the deceased alongwith its magazines, mobile phone and a wallet containing different documents. She further stated that as no one was present to help her in transporting the dead-body of the deceased, so she spent night with the deceased on the spot and could not report the matter at the earliest. The motive was stated to be blood feud between the parties.

3. Learned counsel for the parties alongwith Asstt: Advocate General were heard at length and with their valuable assistance the record was gone through.

4. The learned counsel for the petitioner submitted that as the darkness had prevailed at the time of incident, so the identification in torch light was next to impossible. It was submitted that the presence of the complainant is not established on record and that the murder was un-witnessed. He lastly submitted that the delay of 12-hours leaves no room but to hold that the case is that of further inquiry.

5. Conversely the learned counsel for the complainant alongwith Asstt: Advocate General argued that the petitioners are directly charged and no mala fide could be attributed to the

complainant being a real mother. They further submitted that the delay has been explained in the best possible way.

6. The record tells that the complainant allegedly went with her deceased son to irrigate their fields and that it was on reaching to the place of occurrence, when the incident occurred. Though the complainant asserted her presence with the deceased at the time of the occurrence, yet this Court is to see as to whether at such odd hours of the night and in the prevalent custom of the land her presence on the spot with her deceased son appeals to mind or not. Nothing was brought on record that in fact the complainant had accompanied her deceased son for irrigating the fields and no witness was examined in this respect. The question as to whether the assailants were identified in the torch light can better be determined by the trial Court. One intriguing aspect of the case is that the motive has been stated to be blood feud between the parties but despite in close range only the deceased was targeted and the complainant was left alive being at their mercy. The matter was reported at 07.00 a.m with a delay of 12- hours which the complainant failed to explain and the explanation she tendered was that she spent the whole night with the deceased on the spot as no one was present to help her in transporting the dead-body from the spot either to her house or to the Police Station, which explanation at present is hard to be accepted unless and until the matter is assessed by the trial Court after recording pro and contra evidence. The petitioners were arrested soon after the occurrence but nothing incriminating was recovered from their possession, however, the Kalashnikov allegedly taken from the deceased was recovered from possession of one Hazrat Umar s/o Umar Gul. Though the law is

settled that while seized of bail matters the Courts are to assess tentatively and deeper appreciation is not warranted, but this is also settled that bail applications cannot be heard in vacuum and the Courts should and can consider the available record for the purpose.

In 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.

7. After assessing the record this court can form no other view but to hold that the petitioners have been succeeded in making out a case for bail as one of further inquiry and deserve the requested concession. Furthermore, the investigation is complete and the accused/ petitioners are no more required to the investigating agency.

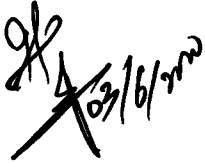
8. For what has been discussed above, this bail application is allowed and the accused / petitioners are admitted to bail subject to furnishing bail bonds amounting to Rs.2,00,000/-(two lacs), with two

sureties each in the like amount to the satisfaction of Illaqa Judicial
Magistrate/ MOD concerned.

Above are the reasons of my short order of the even
date.

Announced:
Dt: 07.05.2020
Azam/P.S


JUDGE



(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah.