

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.368 OF 2020

(Against the order of the Peshawar High Court, Peshawar dated 06.04.2020 passed in Cr. M.B.A No.392-P/2020)

Mukaram

... **Petitioner**

Versus

The State and another

... **Respondents**

For the Petitioner : Mian Shafaqat Jan, ASC
Syed Rifaqat Hussain Shah AOR

For the Complainant Nemo

For the State : Arshad Hussain Yousafzai, ASC

Date of Hearing : 06.05.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Petitioner

has assailed the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 challenging the order of the learned Peshawar High Court, Peshawar dated 06.04.2020 with the prayer to grant leave against the order and to release the petitioner on bail in the interest of justice.

2. The petitioner alongwith others was involved in case bearing FIR No.728/2016 dated 11.06.2016, under Section 302/324/34 PPC, registered with police station Nowshera Kalan, District Nowshera.

As per allegation contained in the crime report, it is alleged that the complainant was cultivating in his fields, at the same time, the petitioner alongwith three others duly armed with firearm, attracted to the place and resorted to indiscriminate firing. The father of the complainant sustained solitary injury which proved fatal. The motive behind the occurrence was previous hostility between the parties. The petitioner alongwith others remained absconder for considerable time. After lapse of four years, he was taken into custody. The petitioner applied for post arrest bail before the learned trial court which was dismissed vide order dated 19.02.2020. The order of learned Addl: District & Sessions Judge-II, Nowshera was assailed before learned Peshawar High Court, Peshawar through CrI. Miscellaneous Bail Application No.392-P/2020 which was decided vide order dated 06.04.2020 while resulting into dismissal of bail application. Hence, the instant petition.

3. At the very outset, it has been argued by the learned counsel for the petitioner that the prosecution has aggravated the occurrence and had ascribed the role of causing firearm injures to four persons with their respective weapons. Contends that the deceased had sustained only one injury on his person which resulted into his death but the same is generalized in nature and has not been ascribed specifically to anyone. Contends that although the occurrence had taken place in broad day light but wider net has been thrown. Contends that though the petitioner remained absconder for four years but absconsion itself is not sufficient to established guilt unless until the same is

substantiated from a direct source *qua overt act* towards the commission of offence. Contends that the petitioner is behind the bar and no more required for further investigation hence, is entitled for the relief as prayed for.

4. On the other hand, learned law officer has stated that the petitioner is nominated in the crime report with the allegation of indulging into indiscriminate firing, however frankly conceded that the deceased has sustained only one injury and even one empty was recovered from the place of occurrence. He admitted that the petitioner remained on physical remand but no recovery has been affected from him. Finally, the learned law officer has stated that as the rest of the accused persons are still at large, therefore, the petitioner is not entitled for grant of bail.

5. We have heard the learned counsel for the parties and gone through the record.

6. There is no denial to this fact that four persons are involved in this case with allegations of causing indiscriminate firing. The deceased sustained only one injury on his person which prove fatal, such allegation is generalized in nature and no one can be saddled with responsibility of causing injury to the deceased. Further only one empty was recovered from the place of occurrence. As far as the element of absconsion is concerned, it is established principle of law that absconsion *per se* cannot be made basis for refusal of bail in the absence of any *overt act* which has contributed towards commission of the offence. The allegation against the petitioner if evaluated in the instant case, he remained

on physical remand but no recovery has been affected from him, hence the case of the petitioner squarely fall within the ambit of section 497(2) Cr.P.C entitling him for the grant of post arrest bail, otherwise liberty of a person is a precious right which cannot be taken away without strong connectivity of accusation.

7. In view of the facts and circumstances, we are persuaded to grant leave to appeal in the instant petition while converting it into appeal and the same is allowed. The petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial court/Duty Judge.

8. Before parting with the order, it has been made clear that the observations made hereinabove are tentative in nature and it has no bearing during the course of proceedings before the learned trial court.

Judge

Judge

Islamabad,
06.05.2020
Approved for reporting
Syed Rashid Maqsood