

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Criminal Petition No.271 OF 2024

(On appeal against the judgment dated 15.03.2024 of the Peshawar High Court, Peshawar passed in CrI. Misc. (B.A.) No.372-P/2024)

Yar Muhammad Khan Petitioner

Versus

The State & another Respondents

For the petitioner: Mr. Hussain Ali, ASC
(Through video link from Peshawar)

For the state: Mr. Noroz Khan, Addl.A.G., KPK
Fazil Khan, DSP
Ma'azullah, S.I.

For the Complainant: Irfanullah (Brother of complainant)

Date of hearing : 25.07.2024

ORDER

NAEEM AKHTAR AFGHAN, J. The petitioner is seeking post-arrest bail u/s 302/324/337-F(v)/A(i)/337-D/34 PPC and 15-AA in FIR No. 470/23 lodged with Police Station (**PS**) Mandani, District Charsadda by Asghar Ali (**the Complainant**) on 11 October 2023 at 14:40 with regard to the occurrence of 11 October 2023 at 13:50 stating therein that at the time of occurrence altercation was going on between his maternal cousin *Firdous* with the petitioner and his brother *Fazal-ur-Rehman*. In the meanwhile, when he alongwith his brother *Adnan*, his sister in law *Mst. Khurmat* and his sister *Mst. Riffat* came out of the house to intervene, on seeing them, the petitioner and his brother, who were standing duly armed, started firing upon them. Due to firing by the petitioner and his brother, he, his brother *Irfan* and his sister *Mst. Riffat* got injured while his sister in law *Mst. Khurmat* died on the spot. His paternal cousin *Firdous* escaped any firearm injury. Motive of the occurrence was stated to be a dispute on the joint *Hujra* (Guest Room) between the Complainant party and accused.

The injured *Mst. Riffat* succumbed to the injuries subsequently.

2. Counter version of the above occurrence was recorded in *Roznamcha* No.19 dated 11 October 2023 at 15:10 u/s 324/436/427/148/149/337-(ii)(iii) PPC on the basis of the statement of

the petitioner that on the date and time of occurrence when he alongwith his wife *Mst. Sania Bibi* were raising construction in front of their *Baithek*, *Firdous* and *Younas* sons of *Yaqoob*, *Nadeem* and *Irfan* sons of *Sahib Gul*, *Azam* son of *Akbar*, *Aimal* son *Zarbakht* and *Latif* came duly armed and after asking them to stop the construction work, they started firing due to which their own relative *Firdous* and *Mst. Sania Bibi* (wife of the petitioner) received firearm injuries. Accused *Nadeem* took out a *Churri* and caused injuries to him and his wife with *Churri*. The accused also set on fire his house due to which his house as well as all the household have burnt. The motive of the occurrence was stated to be dispute over joint *Hujra* (Guest Room).

3. During investigation of FIR No.470/2023 PS Mandani, District Charsadda, fifteen crime empties of 7.62 bore and fifteen crime empties of 9 mm, scattered at the place of occurrence, were taken into possession by the investigating officer.

Seven crime empties of 7.62 bore and three crime empties of .30 bore have been shown recovered from the place of occurrence by the investigating officer in the cross-version case.

4. The petitioner was arrested in FIR No. 470/2023. During investigation, on the pointation of the petitioner, on 24 October 2023 a Kalashnikov (crime weapon) was recovered on the disclosure and pointation of the petitioner from the house of his relative *Abdullah Shah*.

5. The report dated 20 October 2023 of the firearm expert reveals that the seven crime empties of 7.62 bore and three crime empties of .30 bore (shown to be recovered in the cross-version case) were fired from different weapons of 7.62 mm and .30 bore weapons.

However, the report dated 31 October 2023 of the firearm expert confirms that the fifteen crime empties of 7.62 bore (recovered in FIR No.470/2023, PS Mandani, District Charsadda) were fired from 7.62 mm bore (SMG) i.e. the Kalashnikov recovered on the disclosure and pointation of the petitioner.

6. After hearing learned counsel for the petitioner and learned Additional Advocate General, KPK assisted by learned counsel for the Complainant we have perused the available record. On the basis of tentative assessment of the statements of the witnesses of the occurrence, the positive report of the firearm expert and the

incriminating material available on record, the petitioner, being prima-facie involved in the commission of heinous non-bailable offences for committing murder of two persons and making murderous assault upon the Complainant and his family members is held not entitled for concession of post-arrest bail at this stage.

7. In view of sufficient incriminating material available on record against the petitioner, mere registration of counter version of the occurrence by the petitioner vide *Roznamcha* No.19 dated 11 October 2023 cannot be made a basis to grant him post-arrest bail.

For the above reasons, the petition is dismissed.

The observations made hereinabove are tentative in nature and same shall not influence merits of the case at the trial.

Judge

Judge

Islamabad
25.07.2024

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NOT APPROVED FOR REPORTING