

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1023/2020

(Against the order of Peshawar High Court,
Peshawar dated 17.08.2020 passed in
Crl.M.BA No.2275-P/2020)

Jahanzeb and others :
... **Petitioner(s)**

Versus

The State through AG KPK Peshawar and :
another
... **Respondent(s)**

For the Petitioner(s) : Asad Ullah Khan Chamkani, ASC
For the (State) : Ayesha Tasneem, ASC
Complainant in person.

Date of Hearing : 25.11.2020

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ORDER

SAYYED MAZHAR ALI AKBAR NAQVI, J: - Petitioners have invoked the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 calling in question the order of Single Bench of Peshawar High Court, Peshawar dated 17.08.2020 in Crl. M BA No.2275-P/2020 declining post arrest bail to the petitioners with prayer to grant the same in the interest of safe administration of criminal justice.

2. As per allegation contained in the crime report bearing FIR No.310/2020 dated 09.05.2020 u/s 302, 324, 34 PPC registered with police station Daudzai, District Peshawar, it is disclosed that when complainant alongwith his father Ajmal Khan and cousin Asad Ullah were busy in their fields cutting their crop through tractor/cutter, in the meanwhile petitioners alongwith Khan Zaib attracted to the place of occurrence and resorted to indiscriminate firing. It is specifically mentioned that fire shot made by Khan Zaib had hit the father of the complainant who

succumbed to the injury when he was being evacuated to hospital. The motive behind the occurrence is dispute over property.

3. At the very outset, it has been argued by the learned counsel for the petitioners that the petitioners have been falsely roped in this case against the actual facts and circumstances. Further contends that wider net has been thrown by the prosecution while involving two brothers and father in the instant case. Contends that medico legal report clearly reflect that there is only one injury sustained by the deceased which is attributed to co-accused who is fugitive from law. Contends that criminal liability cannot be shifted from one accused to another. Lastly it has been argued that as no recovery of any weapon has been affected from the petitioners therefore, the case of the petitioners squarely fall within the ambit of section 497(2) Cr.P.C. entitling them concession of post arrest bail.

4. Learned counsel appearing on behalf of the State has vehemently opposed the contention raised by the learned counsel for the petitioners. It is argued that all the accused persons in furtherance of their common intention attracted to the place of occurrence, hence, they are jointly liable for the offence committed by them. It is further argued that parties are known to each other prior to occurrence, hence, there is no chance of mis-identification, however, frankly conceded that the post mortem report reveals that there is only one injury available on the body of deceased. Finally it has been argued that the petitioners are vicarously liable for the murder of Ajmal Khan, therefore, they are not entitled for the concession of bail.

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

No doubt, there are certain facts which are not denied by either of the party. This occurrence has taken place in broad daylight

whereas the parties are known to each other being close relatives; hence, there is no question qua the identity of the accused by the prosecution witnesses. The motive behind the occurrence is also not denied, however, the questions which require judicial scrutiny by this Court are: - (i) Sharing common intention. (ii) Role ascribed. (iii) Recovery of weapon as alleged. (iv) Tentative assessment at this stage by this Court. Perusal of the record placed before us, it is an admitted fact that the allegation against the petitioners is that they resorted to indiscriminate firing without causing any injury to anyone; however, the deceased sustained only a single shot whereas none of the prosecution witnesses sustained even a scratch. It is no body's case that the prosecution witnesses escaped from the firing of the petitioners due to some hurdle or safety measure. The occurrence has taken place in open and if there would have been any intent at the part of the petitioners, there was nothing which could restrain them from committing the occurrence on broader spectrum. During the course of investigation though recovery of four empties of pistol .30 bore and three empties of Kalashnikov were recovered from the spot but as no weapon was affected from the petitioners during the course of investigation, therefore, mere recovery of empties would be a question to be resolved by the trial court after recording of prosecution evidence. The contention of the learned counsel that the case of the petitioners squarely fall within the ambit of section 497(2) Cr.P.C. is concerned, the same is reproduced as under:-

497. When bail may be taken in cases of non-bailable offence.

(1)

(2) *If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.*

(3)

(4)
(5)

Perusal of the aforesaid provision reveals the intent of the legislature disclosing pre-condition to establish the word “guilt” against whom accusation is levelled has to be established on the basis of reasonable ground, however, if there exists any possibility to have a second view of the material available on the record then the case advanced against whom allegation is levelled is entitled for the relief in the spirit of section 497(2) Cr.P.C. In the instant case, as no overt act is ascribed to the petitioners except the allegation of ineffective firing not supported by any recovery of weapon and as such the recovery of crime empties from the place of occurrence has no legal sanctity, therefore, the facts and circumstances narrated above brings the case of the petitioners of further inquiry falling within the ambit of section 497(2) Cr.P.C. entitling them for the concession of bail.

6. As a consequence, leave to appeal is granted in the instant petition while converting it into appeal and the same is allowed. The petitioners shall be released on bail subject to their furnishing bail bonds in the sum of Rs.1,00,000/- each with one sureties each in the like amount to the satisfaction of the learned trial court/Duty Judge.

JUDGE

JUDGE

JUDGE

Islamabad/25.11.2020
Not approved for reporting
Athar