

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MS. JUSTICE MUSARRAT HILALI
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

CRIMINAL PETITION NO. 776 OF 2024
(On appeal against order dated 14.06.2024 passed
by the Peshawar High Court, Peshawar in Cr.Misc
(BA) No. 1270-P/2024)

Mazhar Ali
... Petitioner

Versus

The State and another
...Respondent(s)

For the Petitioner: Syed Abdul Fayaz, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Altaf Khan, Addl. A.G. KPK
Mr. Muhammad Usman, DSP
Mr. Aar Gul, SI

For the Complainant: Mr. Hussain Ali, ASC a/w complainant in
person
(Via video link from Peshawar)

Date of Hearing: 24.10.2024

ORDER

MALIK SHAHZAD AHMAD KHAN, J.- Through the instant petition, Mazhar Ali, petitioner, has assailed order dated 14.06.2024 passed by the learned Peshawar High Court, Peshawar, with a prayer to set aside the said order and grant post-arrest bail to him in case registered vide FIR No. 80 dated 24.03.2013 under Sections 302/34/109 PPC at Police Station Asterzai, District Kohat.

2. Arguments heard. Record perused.
3. As per contents of the FIR, Major Abbas Ali Bangash (complainant) alleged that he was posted at GHQ Rawalpindi and on 23.03.2013 at 08:16 PM, he received a phone call from his brother

namely Haider Ali Bangash, who told that their father Ali Muhammad Bangash has been murdered with the help of firearms in his house situated in village Astarzai Payan, District Kohat. It was further stated that on 23.03.2013 at about 07:25 PM, Ali Muhammad Bangash, deceased, was having his dinner in his house. In the meanwhile someone knocked the back door of his house, whereupon, he went out of the said door. After a short while, the inmates of the house heard the report of firing, whereupon, paternal uncle of the complainant namely Taj Muhammad also went out of the house and saw that Ali Muhammad Bangash, deceased, was lying dead in the fields. The complainant further alleged that he proceeded from Rawalpindi to his native village but due to the blockage of the road, he had to change his route and reached his village on the next day but before leaving he restrained his family members to lodge the FIR with the direction that on his (complainant's) arrival, the matter shall be reported to the police. The complainant further alleged that he was confident that Mazhar Ali, petitioner, Zulfiqar Ali alias Bhutto, co-accused and Riaz Ali, co-accused, all sons of Nadir Ali were involved in the murder of his father because there was a property dispute of the complainant party with them. The complainant further alleged that his deceased father told him and his brothers during his lifetime that he can be murdered by the petitioner and his above-mentioned co-accused/brothers.

4. The occurrence in this case took place on 23.03.2013 at 07:30 PM but the FIR was lodged on 24.03.2013 at 09:20 AM and, as such, there is a delay of 13 hours and 50 minutes in lodging the FIR whereas as per relevant column of the FIR there was a distance of only one (1) kilometer between the place of occurrence and the Police Station. Although in order to cover the above-mentioned delay in lodging the FIR,

it was stated by the complainant in the FIR that he (complainant) restrained his family members from reporting the matter to the Police till his arrival from Rawalpindi but perusal of the contents of the FIR shows that paternal uncle of the complainant namely Taj Muhammad and the other family members were also present at the spot at the time of occurrence, therefore, it is not understandable that as to why the FIR was not lodged by them for a period of 13 hours and 50 minutes. No eye-witness was mentioned in the FIR and contents of the FIR show that the occurrence was unwitnessed. The only witness mentioned in the FIR, who was present at the time of occurrence, was paternal uncle of the complainant namely Taj Muhammad, who on hearing the report of firing, went out of the house and found Ali Muhammad Bangash, deceased, while lying dead in the fields near the house of the complainant. However, on the next day of occurrence, the prosecution introduced two eye-witnesses in this case namely Mst. Aalia Parveen and Mst. Maria Parveen as eye-witnesses of this case, who were daughters of the deceased and who stated that at the relevant time on the night of occurrence, they were present inside their house and they saw from the window of their kitchen with the help of a searchlight that three unknown accused were making fire shots at their father Captain Ali Muhammad Bangash, deceased. Later on, the said witnesses also identified the petitioner and his co-accused during identification parades but as mentioned earlier the names of above-mentioned eye-witnesses namely Mst. Aalia Parveen and Mst. Maria Parveen, who were sisters of the complainant, were not mentioned in the FIR though the FIR was lodged on the next day of the occurrence. It does not appeal to a prudent mind that when the above-mentioned eye-witnesses were statedly present at the relevant time inside the house where the occurrence took place then as to why their brother namely Major Abbas

Ali Bangash, who is complainant of the FIR, has not mentioned their names in the contents of the FIR. It is further noteworthy that Mazhar Ali, petitioner along with his two brothers namely Zulfiqar Ali alias Bhutto and Riaz Ali was nominated in the FIR, therefore, evidentiary value of the prosecution evidence qua identification of the petitioner during identification parades after his nomination in this case requires further probe and inquiry entitling the petitioner to the grant of post-arrest bail. Reference in this context may be made to the case of Naveed Sattar vs. The State (2024 SCMR 205) wherein post-arrest bail was granted to the accused of said case in almost identical circumstances while *inter alia* observing in paragraph No. 5 of the said judgment as under:

"The identification parade was conducted after petitioner's nomination by the complainant and in such circumstances, prima facie the sanctity of such test identification parade is open for determination."

5. It is also noteworthy that two co-accused of the petitioner namely Zulfiqar Ali alias Bhutto and Riaz Ali, who are real brothers of the petitioner and who were also named in the FIR along with the petitioner as accused in this case and who were also identified by Mst. Aalia Parveen and Mst. Maria Parveen, alleged eye-witnesses, during their identification parade have already been acquitted by the learned Trial Court. The same prosecution evidence has already been disbelieved against above-mentioned co-accused by the learned Trial Court. Their case is not distinguishable from the case of the petitioner except alleged abscondence of the petitioner. It is true that the petitioner statedly remained an absconder in this case for a period of 10 years but it is by now well settled that mere abscondence of an accused by itself is no ground to refuse bail to him if otherwise he is entitled to the said

relief on merits. Reference in this context may be made to the cases of Hidayat Khan Vs. The State (2023 SCMR 172), Ehsanullah Vs. The State (2012 SCMR 1137) and State vs. Mukhtar Ahmad Awan (1991 SCMR 322).

6. Consequently, this petition is converted into appeal and allowed. The impugned order is set aside. The petitioner is granted post-arrest bail subject to his furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
24th of October, 2024
Approved For Reporting
Khurram