

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.1146 of 2021**

*(Against the order dated 24.09.2021 passed by the Peshawar High Court Peshawar in Crl.M.BA No.2378-P/2021)*

***Yasar Khattak***

*.....Petitioner(s)*

**Versus**

***The State & another***

*...Respondent(s)*

For the Petitioner(s): Mr. Aftab Alam Yasir, ASC

For the State: Mr. Shumail Aziz, Addl. A.G. KP

For Respondent No.2: Mr. Iltaf Samad, ASC

Date of Hearing 24.01.2022.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** In the backdrop of an ongoing feud over property, Qaimullah complainant and his brother Hanifullah were assaulted at 9:00 hours on 28.5.2020 within the precincts of Police Station Lound Khurd District Mardan, jointly by Yasir, Anwar Shaheen, Fakhar Alam and Zahir Shah, real brothers *inter se*. Complainant survived the assault whereas his brother succumbed to the injury. As the investigation progressed, Zahir Shah co-accused was exonerated whereas nothing was recovered from the co-accused except the present petitioner, who pursuant to a disclosure, led to the recovery of a pistol, forensically wedded with two casings secured from the spot. A three member Bench of this Court vide order dated 15.04.2021 admitted co-accused to post arrest bail on the basis whereof, principle of requirement of consistency is being invoked for an identical treatment.

2. Heard. Record perused.

3. It would be advantageous to reproduce the relevant

portion of the order *ibid*:-

*".....It has further been observed by us that the instant case was registered against four persons including the petitioners, out of whom co-accused Zahir Shah with similar allegation has been found innocent during the course of investigation and his name was placed in column No.2 of the report under Section 173, Code of Criminal Procedure. So far as the petitioners are concerned, learned counsel appearing on behalf of State has confirmed that during the course of investigation nothing was recovered at their instance or from their possession. He further confirms under instructions that co-accused Yasir got recovered a pistol and two out of eight empties secured from the spot matched with that pistol. All these circumstances make the case of petitioners one of further inquiry falling within ambit of Section 497(2), Code of Criminal Procedure."*

The above findings clearly suggest that accusation, notwithstanding, investigative conclusions drawn by the Investigating Officer, weighed with the Court to favourably receive the bail plea of the co-accused for their distinctly placed in a distinguishable position, that independently called for further probe vis-à-vis the role assigned to them, an analysis that hardly furnishes a ground to invoke principle of consistency qua the petitioner, distinctly saddled, a fact duly noted in the order *ibid* itself. Petition fails. Leave declined.

**Judge**

**Judge**

**Judge**

Islamabad, the  
24<sup>th</sup> January, 2022  
Azmat/-