

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)(P.O)

1. CRIMINAL PETITION NO.911 OF 2020

(Against the order of Peshawar High Court,
Mingora Bench (Dar-ul-Qaza) Swat dated
29.06.2020 passed in Cr.M.(B.A) No. 293-
M/2020)

Farman Ullah

...

Petitioner

Versus

The State through Addl: Advocate ...
General & another

Respondent

For the Petitioner : Mr. Kausar Ali Shah, ASC
Syed Rifaqat Hussain Shah, AOR
For Respondent : Malik Akhtar Hussain, AAG KPK
State

Date of Hearing : 13.08.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI:- Petitioner has 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 dated 29.06.2020 declining post arrest bail to the petitioner with prayer to grant the same in the interest of safe administration of justice.

2. The petitioner was booked in response to an occurrence which took place on 21.05.2020 at 7.00 p.m., during which an altercation took place between two factions wherein stone pelting was done against each other. As a consequence, Zia Ullah sustained injuries on his head which was ascribed to Farman Ullah, petitioner. Motive behind the occurrence is disputed over agricultural land. The local police received information qua the incident which was incorporated bearing FIR

No.91/2020 dated 30.05.2020, under section 337-A(v)/34 PPC registered with police station Samarbagh, District Dir Lower.

3. At the very outset, it has been argued by learned counsel for the petitioner that there is unexplained delay of nine days in lodging of FIR for which no explanation has been rendered. Contends that the accusation has been aggravated by the prosecution while nominating the petitioner as the main perpetrator of the aforesaid crime. Contends that in fact it was sudden affairs in which both the factions threw stones against each other, as such the allegation ascribed against the petitioner cannot be substantiated with exactitude. Contends that recovery of alleged stone after lapse of nine days from open place further create dent in recovery proceedings. Lastly it is argued that injured remained in hospital only for two days and even afterwards the matter was reported to the local police with the delay of seven days raise suspicion in the genuineness of the prosecution version.

4. On the other hand, learned Law Officer states that the petitioner is nominated in the crime report with specific allegation. The CT-Scan clearly shows that there is fracture of skull on the right side frontal bone with depression. Contends that "Hematoma" is also seen in right frontal lobe with surrounding edema (edema). Contends that in view of the report of CT-Scan it is abundantly clear that the petitioner has committed the offence which do fall within prohibition contained under section 497 Cr.P.C., therefore, the petitioner is not entitled for bail after arrest.

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

There is no denial to this fact that the injury ascribed to the petitioner is on vital part of the body; however, this Court cannot loose sight of the other attending circumstances while adjudicating the matter

before us. Undeniably, there is in-ordinate delay of nine days in lodging of FIR for which no explanation has been rendered by the prosecution. The injured was admitted in the emergency on 21.05.2020 whereas he was discharged from the hospital on 23.05.2020. It is strange enough that even after being discharge from the hospital, the matter was not reported to the police which aspect cannot be ignored especially when the inter-se distance between place of occurrence and police station is merely 6/7 kilometers. Otherwise bare perusal of contents of the crime report reflects that the incident has taken place at the spur of moment without any prior preparation. There is no allegation that any conventional weapon was used to commit the instant crime rather it is specifically mentioned that the injury was caused while hitting the injured by a stone. The prosecution witnesses during their statements under section 161 Cr.P.C. categorically stated that stone pelting was done during the scuffle from both sides. This aspect further lends support to the fact that the stone was recovered by the investigating officer after the lapse of nine days from an open place. When all these facts are evaluated conjointly, possibility cannot be ruled out that the accusation levelled against the petitioner is an after thought. This Court is conscious of the fact that liberty of the person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The accumulative effect of all these facts and circumstances narrated above, 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.1,00,000/-with two sureties in the like amount to the satisfaction of the learned trial court.

6. These are the reasons of our short order dated 13.08.2020 which is reproduced below:-

"For reasons to be recorded later, this petition is converted into appeal and allowed. The petitioner is granted post arrest bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with two sureties in the like amount to the satisfaction of the Trial Court concerned"

Islamabad,

13.08.2020

Not approved for reporting.

Athar