

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Maqbool Baqar  
Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.280 of 2021**

*(Against the judgment dated 18.02.2021 passed by the Peshawar High Court Bannu Bench in B.A. No.49-B/2021)*

***Muhammad Aurangzeb***

*...Petitioner(s)*

**Versus**

***Karim Khan alias Abdul Karim Khan and others***

*...Respondent(s)*

For the Petitioner(s): Mr. Rahman Ullah, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State: Ms. Aisha Tasneem, ASC

For the Respondent(s): Malik Nouman Khalid, ASC with  
respondent No.2

Date of Hearing: 02.12.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Karim Khan alias Abdul Karim Khan and Sabir Jan along with co-accused were arrayed as accused by the petitioner for committing *Qatl-i-Amd* of his brother Nematullah at 4:10 p.m. on 17.10.2020 within the precincts of Police Station Lakki Marwat; armed with Kalashnikovs, the assailants targeted the deceased in the backdrop of an ongoing blood feud. Autopsy report confirmed receipt of three entry wounds on different parts of body with corresponding exit. 46 casings of . 7.62 mm secured from the spot were forensically opined to have been fired from different weapons. The Investigating Officer held the respondents as participants in the crime; their request for bail was declined by the Court of Sessions, however, a learned Judge-in-Chamber of the Peshawar High Court Bannu Bench vide impugned order dated 18.02.2021 allowed them bail on the ground premised as under:-

*"There is no denial to the fact that the deceased lost his life  
owing to the firearm injuries, which led to a charge against*

*the petitioners and two others. Record tells that all the petitioners i.e. four in number are real brothers and that the complainant stated of having previous blood feud. True that the petitioners are directly charged but equally true that two real brothers from one and the same family have been charged for murder of the deceased and the deceased received four firearm injuries on his body where two of the entry wounds are caused on the vital part of his body, whereas two on non-vital parts. This court is to see as to whether it was the doing of one or more than one person; and that despite blood feud enmity the complainant escaped unhurt when he too was at mercy of the assailants. True that while seized of bail matter the court is to tentatively assess the material brought before it and deeper appreciation of evidence is not warranted, but equally true that bail applications cannot be heard and decided in vacuum."*

*Vires* of the above findings have been assailed as being factually incorrect as well as self-destructive, as according to the learned counsel, there existed reasonable grounds within the contemplation of section 497 of the Code of Criminal Procedure, 1898 to *prima facie* frame the respondents with the crime complained, punishable with death, thus, in the absence of any consideration calling for further probe, there was no occasion for the High Court to release them on bail for reasons imaginatively articulated. The learned counsel for the respondents defended the impugned order being well within the discretion of the Court. It is next argued that the courts are slow in the absence of strong and compelling reasons to recall freedom once granted by a competent tribunal.

2. Heard. Record perused.

3. No doubt, grant of bail is a discretionary relief, however, it is most essential that exercise of discretion is structured upon sound judicial principles, in conformity with statutory parameters. *Prima facie*, prosecution evidence comprising statements of the complainant, eye-witnesses and autopsy report, squarely constitute "*reasonable grounds*" insurmountably barricading respondents' admission to bail in the absence of any consideration calling for further probe. We have also noted different parentage of the accused mentioned in the crime report to contradict the theory of all brothers in the dock. A conclusion based upon a wavering analysis with reference to judicial opinions hardly relevant in circumstances fails to commend our approval.

Grant of bail in disregard to the settled principles of law or on a premise factually incorrect, by itself, presents a conscionable justification to recall the concession; it does not require hypothetical or euphemistic strong grounds as an undue concession grievously militates against the fundamental principle of equal treatment to the people placed in identical situations with expectations consistent in their judicial pursuits. Petition is converted into appeal and allowed; impugned order dated 18.02.2021 is set aside; bail granted thereunder is cancelled. Respondents be taken into custody so as to confront their indictment before the trial Court.

**Judge**

**Judge**

**Judge**

Islamabad, the  
2<sup>nd</sup> December, 2021  
Azmat/-