

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL PETITION NO. 172-P OF 2021

(On appeal against the judgment dated 15.11.2021
passed by the Peshawar High Court, Peshawar in Cr.
MBA No. 3288-P/2021)

Gul Nawab

... Petitioner

VERSUS

The State through A.G. KPK and another

... Respondents

For the Petitioner(s): Syed Abdul Fayaz, ASC

For the Complainant: In person

For the State: Mr. Arshad Hussain Yousafzai, ASC
Mr. Akbar Rehman, I.O

Date of Hearing: 25.01.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 15.11.2021 passed by the learned Single Judge of the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case registered vide FIR No. 732 dated 25.08.2012 under Sections 302/34 PPC at Police Station Nowshera Kalan, District Nowshera, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he along with co-accused while armed with firearms attacked on the complainant party and due to the fire shots made by them the nephew of the complainant has lost his life.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in

this case against the actual facts and circumstances. Contends that the complainant has involved four accused in the present case and the role ascribed to each one of them including the petitioner is of general nature. Contends that four empties of 7.62 bore were collected from the spot whereas no weapon has been recovered from the possession of the petitioner, therefore, it cannot be said with certainty as to whose fire hit the deceased. Contends that in-fact the complainant party was aggressor and one person from the petitioner's side also lost his life during the incident and in this regard the petitioner's side has also lodged FIR bearing No. 733/2012 under Sections 302/34 PPC against the complainant party on the same day and time. Lastly contends that the case of the petitioner falls within the ambit of further inquiry, therefore, he may be granted bail in the interest of justice.

4. *On the other hand, learned State counsel has defended the impugned order whereby post-arrest bail has been declined to the petitioner. He contended that the petitioner has been specifically nominated in the crime report with a specific role of firing at the deceased and he remained absconder for a long period of nine years, which shows his guilty mind, therefore, he does not deserve any leniency by this Court. He placed reliance on Nasir Muhammad Wassan Vs. The State (1992 SCMR 501) to contend that mere registration of cross-version could not be a ground for grant of bail.*

5. *We have heard learned counsel for the parties at some length and have perused the record with their able assistance.*

Perusal of the contents of the crime report clearly reflect that the petitioner along with co-accused launched murderous assault on the complainant party while using firearms resulting into death of the nephew of the complainant. We have noted that only a general role of firing has been ascribed to the petitioner without any specification qua (i) kind of weapon, (ii) part of the body which has been hit, and (iii) any recovery of the empties from the place of occurrence specifying the accusation against the petitioner. We are conscious of the fact that four empties of 7.62 bore were taken into possession by the Investigating Officer. However, no recovery has been affected from the petitioner after he was taken into custody.

Perusal of the crime report clearly reflects that the complainant has not mentioned any overt act towards the opposite party whereas it is clear stance of the petitioner that in-fact the complainant party had shown aggression and initiated the occurrence. In this regard, separate FIR bearing No. 733/2012 under Sections 302/34 PPC has been registered on the same day and time. There is no denial to this fact that the occurrence described in the other crime report was not outcome of the same occurrence, which clearly reflects that the complainant has concealed the real facts while lodging the crime report in which the petitioner is seeking the relief of bail. It is established principle of law that when there are two versions of the occurrence, it squarely invites the provisions of Section 497(2) Cr.P.C. calling for further probe into the occurrence, which is apparent in this case. So far as the argument of learned Law Officer that the petitioner remained absconder for a period of nine years is concerned, we are of the view that mere absconsion cannot be a ground to discard the relief sought for as it is established principle of law that disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly. Reliance is placed on Rasool Muhammad Vs. Asal Muhammad (PLJ 1995 SC 477). Another judgment wherein the petitioner remained absconder for considerable time and was involved in many other criminal cases but despite that he was given bail on merits is Moundar and others Vs. The State (PLD 1990 SC 934). Reliance is also placed on Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53). This Court in various judgments has held that mere absconsion is not a proof of guilt, hence, cannot be made sole ground to discard the relief sought for. Even otherwise, it is most cardinal principle of law that each criminal case has its own facts and circumstances and that have to be weighed accordingly. Learned Law Officer has relied upon a judgment of this Court wherein mere registration of counter version was not considered as a ground for grant of bail. However, this principle is not absolute in any manner as in the instant case both the sides have lost a life and are placed on equal proportion regarding culpability and the factum of aggression would be resolved by the learned Trial Court after recording of evidence. As a consequence, we convert this petition

into appeal, allow it and set aside the impugned order dated 15.11.2021. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
25th of January, 2022
Approved For Reporting
Khurram