

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 1183 OF 2021

(On appeal against the order dated 15.10.2021 passed by the Peshawar High Court, Peshawar in Cr.Misc (Bail Application) No. 3098-P/2021)

Sikandar Hayat

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner: Mr. Muhammad Fahim Wali, ASC

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

Date of Hearing: 01.11.2021

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 15.10.2021 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. 966 dated 03.08.2021 under Sections 302/324/148/149 PPC at Police Station University Town, Peshawar, 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 assaulted on the complainant party and due to the fire shots made by the petitioner, two persons have lost their lives.

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 of this case. Contends that the prosecution has involved five accused in the present case and the role ascribed to each one of them including the

petitioner is of general nature. Contends that the report of the FSL as to empties suggest that they were fired from one and the same weapon and in this view of the matter the case of the petitioner falls within the ambit of further inquiry, therefore, he is entitled for the concession of bail.

4. *On the other hand, learned Law Officer 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 persons and the three natural eyewitnesses are deposing against him, therefore, he does not deserve any leniency by this Court.*

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

As per the contents of the crime report, the allegation leveled against the petitioner is that he along with four co-accused while armed with firearms has launched an attack on the complainant party and due to fire shots made by them two persons have been done to death. However, we have noted that only a general role of firing has been ascribed to the petitioner and no details have been given as to what kind of weapon the petitioner had used and on which parts of the body of the deceased, the alleged fire shots made by him landed. We have also noted that from the place of occurrence, 27 empties were taken into possession, which according to the report of the FSL were found to be fired from one and the same weapon. In this view of the matter, when the role ascribed to the petitioner is of general nature and according to the report of FSL only one weapon was used in the commission of the crime, it is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner and until then the petitioner cannot be kept behind the bars for an indefinite period. Keeping in view all the facts and circumstances, the case of the petitioner squarely falls within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

6. *For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 15.10.2021. The petitioner is admitted to bail subject to his*

furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
1st of November, 2021
Not Approved For Reporting
Khurram