

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1029/2020

(Against the judgment of the Peshawar High Court (Bannu Bench) dated 06.08.2020 passed in Cr.MBA No.381-B/2020)

Sajid

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Petitioner(s)

Versus

Samin ur Rehman (deceased) through his father Gul Jawab Khan and others

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Respondent(s)

For the Petitioner(s)

: Pir Liaquat Ali Shah, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s)

: Gul Jawab Khan, Respondent No.04 in person

For the (State)

: Ms. Tehmina Mohibullah, ASC/State
Counsel
Mr. Muhammad Nauroz SI,
Loyi Daraz Khan (Complainant)

Date of Hearing

: 21.10.2020

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ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J: - Criminal petition for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the judgment dated 06.08.2020 passed by Peshawar High Court (Bannu Bench) in Cr.MBA No.381-B/2020 with the prayer to grant leave against the order and to release the petitioner on bail in the interest of justice.

2. The petitioner was nominated in case bearing FIR No.22/2020 dated 23.05.2020 offence u/s 302/324/34 PPC, registered with Police Station Razmak, Tribal District North Waziristan.

As per allegation contained in the crime report, it is alleged that petitioner alongwith 05 others attacked the complainant party causing

death of Samin-ur-Rehman and Jameel-ur-Rehman whereas Ashiq-ur-Rehman, Shafi-ur-Rehman, Ihsan Ullah, Amin and Gul Jawab sustained injuries. The motive behind the occurrence is previous enmity between the parties. The petitioner was taken into custody by the police. He applied for post arrest bail before the learned trial court which was dismissed vide order dated 20.07.2020. The same was agitated before learned Peshawar High Court (Bannu Bench) through Crl.MBA No.381-B/2020 which too met the same fate vide order dated 06.08.2020. Hence, the instant petition.

3. The crux of the arguments advanced by the learned counsel for the petitioner are that admittedly, the complainant is not eye-witness of the occurrence and even no specific allegation mentioned by the complainant while lodging crime report. Contends that one of the deceased Jameel-ur-Rehman has died of natural death. The findings recorded by the doctor while conducting post-mortem examination, he has categorically stated that no apparent sign of wound over the body of the deceased was observed. However GCS (Glasgow Coma Scale) was scored to be 7/15. Contends that other co-accused sustained stab wound which is not specifically ascribed to any person nominated in the crime report. Contends that all the injured PWs sustained minor injuries. Contends that the petitioner himself sustained injuries during the occurrence but this aspect has been suppressed by the prosecution.

4. On the other hand, learned law officer appearing on behalf of the State has argued that the instant occurrence has taken place in a Tribal Area however the matter was reported to the police within half an hour. Contends that the promptness qua recording of FIR, vanish any chance of deliberation and consultation. Contends that the statement of petitioner was recorded by the Investigating Officer as counter version and further proceedings were carried out in response to his version. The

learned State Counsel however frankly conceded that solitary injury caused to one of deceased is not ascribed to any accused in the crime report. Finally argued that co-accused of the petitioner are still at large, therefore, petitioner is not entitled for the concession of bail.

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

Although, it is an admitted fact that the petitioner is nominated in the crime report which is lodged with promptitude. As per contents of the crime report, two persons were done to death whereas five sustained minor injuries. The mode and manner of commission of offence is generalized in nature. It does not specify any accused of causing any injury either to any deceased or injured PWs. Even the weapons used by the accused is not described in the crime report. The statement of prosecution witnesses were recorded on 23.05.2020. The perusal of statements of all the prosecution witnesses, it reflects that those are recorded in the same pattern as in the crime report. Even during the course of investigation, nothing was brought forth contrary to earlier stance of the complainant and other prosecution witnesses. As far as medical reports are concerned, perusal of the post-mortem report to the extent of one of the deceased Jameel-ur-Rehman, the doctor has specifically given the finding that the deceased had no visible injury on his person which could have been observed by the doctor at the time of conducting autopsy, even against the column of "cause of death" the above observation is incorporated. However doctor has specifically mentioned that GCS (*Glasgow Coma Scale*) was 7/15 which otherwise shows very poor response of consciousness of said Jameel-ur-Rehman who ultimately expired. The other deceased Samin-ur-Rehman had sustained only one stab wound at the epigastric region. While the rest of

PWs sustained minor injuries that too without any specification. The petitioner himself claimed that he was given beating by Gul Jawab and Amin. The Investigating Officer recorded his statement u/s 161 Cr.PC on 26.05.2020. He was further examined by the Magistrate u/s 164 Cr.PC on 25.06.2020. Police recorded counter version of the accused however it has been pointed out before us that pre-arrest bail of both accused (Gul Jawab & Amin) nominated by the petitioner were granted pre-arrest bail vide order dated 20.07.2020 by the learned ASJ-I, North Waziristan at Bannu. The aforesaid aspect bring the case of prosecution squarely a case of two versions attracting provision of section 497(2) Cr.PC. Even during course of investigation, nothing was recovered being incriminating to strengthen the prosecution version. The contention raised by the learned law officer that co-accused of the petitioner are still still absconder, has no legal sanctity. It is now settled by this Court that the criminal liability cannot be shifted from one person to another merely on the ground that co-accused are fugitive from law otherwise basic law is bail not jail.

6. Keeping in view the facts and circumstances narrated above and law on the subject, we are of the considered view that the case of the petitioner is of further inquiry fully covered by section 497(2) Cr.PC entitling for concession of bail. As a consequence, leave to appeal is granted in the instant petition while converting it into appeal and the same is allowed. The petitioner shall be released subject to his furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial court/Duty Judge.

JUDGE

JUDGE