

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 442 OF 2021**

*(On appeal against the order dated 09.04.2021 passed by the Peshawar High Court, Peshawar in Cr. Misc. (BA) No. 976-P/2021)*

Saeed Yousaf

... Petitioner

**VERSUS**

The State and another

... Respondents

For the Petitioner: Mr. Dar-ul-Salam, ASC

For the State: Mr. Shumayl Aziz, Addl. A.G. KPK  
Mr. Anwar Ali, Inspector

For the Complainant: In person

Date of Hearing: 15.06.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks post-arrest bail in case registered vide FIR No. 687 dated 20.11.2019 under Sections 302/324/34 PPC at Police Station Akora Khattak, District Nowshera. The same relief was denied to him by the learned Trial Court as also by the High Court vide impugned order.

2. As per contents of the crime report, the deceased was taking children to school in his Datsun car. When he saw the accused armed with firearms, he informed the complainant through mobile to reach at the place of occurrence. When the complainant and his nephew reached there, co-accused Abid started firing with Kalashnikov on the deceased from the front side whereas the co-accused Iqbal started firing at the deceased from backside, due to which he lost his life. The petitioner along with the three co-accused also fired at the complainant and his nephew Mehmood due to which they received injuries. The motive was stated to be a quarrel which took place between the deceased and the accused.

3. Learned counsel for the petitioner inter alia contended that the petitioner has been falsely involved in the instant case by

*the complainant against the actual facts and circumstances of this case in connivance with the local police; that in the FIR though the petitioner has been assigned specific role of causing injury on the injured PWs, however, the medical officer while examining the injured PWs has clearly opined that the injuries on both the injured PWs are suspected, which clearly reflects that the medical officer was doubtful about the infliction of the injuries as stated in the crime report; that though the co-accused of the petitioner are still at large but the criminal liability cannot be shifted from one accused to another; that the petitioner is behind the bars and during course of investigation, no recovery has been affected from him, which further lends support to the version of the petitioner claiming innocence in the case. Lastly it has been argued that the investigation is complete and the petitioner is no more required for further investigation and he is entitled for the concession of bail on this score alone.*

4. *On the other hand, learned Additional Prosecutor General and the complainant in person have supported the impugned order declining bail to the petitioner. Learned Law Officer contended that the petitioner has been specifically nominated in the FIR, therefore, he does not deserve any leniency by this Court.*

5. *We have heard learned counsel for the petitioner as also learned Law Officer and have perused the record with their assistance.*

*There is no denial to this fact that there are four persons involved in the case. The role of causing firearm injury to the deceased is ascribed to the co-accused of the petitioner whereas the only role attributed to the petitioner is that he caused injury to the injured PWs. During medical examination of the injured PWs, it has been specifically mentioned in the medico legal report that the injuries sustained by both the injured PWs are suspected. Even otherwise, there is no specification of injury caused to the injured PWs and even the nature of injury has not been described by the Doctor. We have been informed that from the place of occurrence, four empties were recovered but since no weapon of offence has been recovered, this cannot be used against the petitioner. It has been brought in the notice of the Court that co-accused of the petitioner are still at large and there is no likelihood of their arrest in near future. We have taken care of this aspect of the case. Criminal liability cannot be shifted from one person to the other merely on the*

ground that the co-accused of the petitioner are still at large. Perusal of the record reveals that one of the grounds on which the learned courts below have refused bail to the petitioner is that he remained absconder after the incident. It is now settled that an accused can be granted bail if the case of the petitioner is otherwise made out on merits and mere absconsion would not come in his way. In Rasool Muhammad Vs. Asad Muhammad (PLJ 1995 SC 477), this court has held that disappearance of a person named as a murderer after occurrence is but natural whether named rightly or wrongly. This Court in Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53) and Mitho Pitafai Vs. State (2009 SCMR 299) has held that mere absconsion is not conclusive proof of guilt of an accused person. It is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof. The value of absconsion, therefore, depends on the facts of each case and bail can be granted if an accused has good case for bail on merit and mere absconsion would not deprive him bail, if otherwise the case of the petitioner is of "further inquiry" as envisaged under Section 497(2) Cr.P.C and further no useful purpose would be served while keeping him behind the bars till the conclusion of the trial pending adjudication before the Trial Court.

6. For what has been discussed above, the petitioner has made out a case for grant of bail. Consequently, we convert this petition into appeal, allow it, set aside the impugned order and admit the petitioner to bail, subject to his furnishing bail bonds in the sum of Rs.500,000/- (rupees five hundred thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
15<sup>th</sup> of June, 2021  
Approved For Reporting  
Khurram