IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.893 of 2020
(Against the order dated 07.07.2020 passed by the Peshawar High Court, Bannu Bench in Crl. Misc. BA No.307-B/2020)

Haji Shah Behram

...Petitioner(s)

Versus

The State and others

...Respondent(s)

For the Petitioner(s):	Mian Muhammad Zafar Iqbal, ASC
For the Complainant:	Mr. Salauddin Malik, ASC
For the State:	Mr. Arshad Hussain Yousafzai, ASC
Date of hearing:	03.02.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Impugned herein is order dated 07.07.2020 by a learned Judge-in-Chamber of the Peshawar High Court Bannu Bench, admitting respondents to post arrest bail in a case of murderous assault wherein they were arrayed on petitioner's complaint. It is alleged that on the eventful day at 4:30 p.m, respectively armed with a Kalashnikov and .12 caliber gun, they targeted the petitioner within the remit of Police Station Gambela, District Lakki Marwat, in the backdrop of an ongoing feud over the property; he was medically examined under a police docket same day when the Medical Officer confirmed receipt of firearm injuries on the right medial forearm as well as deltoid area with corresponding exits, designated as *Jurh Ghayr Jaifah Badiah.* The reasons that weighed with the High Court to allow the motion are as follows:

> *"In the instant case, the occurrence had reportedly taken place at 16:30 hours with a considerable unexplained delay of three hours. The I.O has recovered only two crime empties of 7.62 bore from the place of accused/petitioner Umer Jan, while no empty whatsoever has been recovered from the place of accused/petitioner Hameedullah who was attributed firing with DBBL shot gun. All the above noted facts cast grave doubt on the veracity of prosecution case*

> *and needs further inquiry into the guilt of accused/petitioners. As per medico legal report, the nature of injury sustained by complainant "Ghayr Jaifah Badiah" is covered by Section 337 F(ii) which does not fall within the prohibitory clause of Section-497 Cr.P.C."*

Learned counsel for the petitioner while referring to a string of identical criminal cases registered against the respondents has primarily argued that there was no occasion for the High Court to release the respondents on bail as the statements of the witnesses supported by medical evidence and investigative conclusions, squarely constituted "*reasonable grounds*" within the contemplation of section 497 of the Code of Criminal Procedure, 1898, standing in impediment to their release on bail in the absence of any space admitting consideration for "*further inquiry"*, a *sine qua non,* for favourable exercise of discretion; the bottom line is that the impugned order being nugatory to the settle norms of exercise of discretion warranted interference. Learned counsel for the respondents has defended the impugned order on the grounds that once bail is granted by a competent tribunal, exceptionally strong grounds are required to recall interim freedom, adding that final adjudication can always remedy interim release of an offender even if erroneous in case the prosecution succeeds to drive home the charge at the end of the day; the impugned order being within the four corners of law, particularly in the wake of submission of report under section 173 of the Code is not open to exception, concluded the learned counsel.

2. Heard. Record perused.

3. Section 497 of the Code of Criminal Procedure, 1898 places an unambiguous bar on grant of bail to an accused, *".....if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for a term for ten years"*: However, subsection 2 thereof provides an escape route to him if, at any stage of the investigation, inquiry or trial, it is observed that there are no reasonable grounds for believing that he had committed a non-bailable offence and instead there were sufficient grounds for '*further inquiry'* into his guilt. It is in this clearly demarcated statutory framework that an accused charged with an offence punishable with a term of 10 years or above has to make out a plea for his release on bail.

Criminal cases, invariably resting upon vastly distinguishable facts, do not admit space for hard and fast rules, empirically applicable with any degree of unanimity in every situation; in each case culpability

of an accused is to be assessed, having regard to its own peculiar facts and circumstances, therefore, determination of "*sufficient grounds"* in contradistinction to "*further inquiry"* has to be essentially assessed, with a fair degree of objectivity on the basis of evidence collected during the investigation; wording employed as *"there are no reasonable grounds for believing that the accused has committed a non-bailable offence"* is an expression of higher of import and, thus, cannot be readily construed in the face of material, *prima facie,* constituting the offence complained. "*Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial subsequently after evaluation of evidence*[1]*".* Similarly, "*mere possibility of further inquiry which exists almost in every criminal case, is no ground for treating the matter as one under subsection 2 of section 497 Cr.P.C.*[2]. It clearly manifests that expression "*further inquiry"* is a concept far from being confounded in subjectivity or to be founded upon denials or parallel stories by the defence; it requires a clear finding deducible from the record so as to be structured upon a visible/verifiable void, necessitating a future probe on the basis of material hitherto unavailable. With the available statement of the injured supported by the eye witnesses, "*who cannot be stamped as false witnesses* at bail stage"[3], confirmed by medical evidence. The High Court has clearly misdirected itself in holding that respondent's culpability warranted further inquiry. It cast away the very basis of the impugned order. Argument that exceptionally strong grounds are required to cancel bail even if granted erroneously, nonetheless, by a tribunal competent to extend such relief, does not hold much water inasmuch as erroneous application of law by itself presents a strong ground for its annulment. Strict adherence to law is a *sine qua non* to ensure predictability of consequences of a criminal act in any civilized legal system; it is imperative to ensure peace in the society through means and methods prescribed by law. It discourages criminal behaviours and at the same time strengthens people's faith in the rule of law.

Observation by the High Court that nature of injury as "*Jurh Ghayr Jaifah Badiah"* being punishable under section 337 F(ii) brought

---

1. PLD 1994 SC 65 (*Shah Zaman and 2 others Versus The State and another)*
2. PLD 1998 SC 621 (*Asmatullah Khan v. Bazi Khan and another)*
3. 2003 SCMR 68 (*Qudrat Bibi Vs. Muhammad Iqbal and another)*

respondents' case outside the remit of prohibitory clause of section 497 of the Code is also unsustainable, inasmuch as, the language employed in section 324 of the Code unambiguously provides a punishment that may extend to ten years imprisonment with a fine; it is in the event of hurt caused that in addition to the aforesaid an offender shall be liable to the punishment provided therefor, an amendment, contemplated to provide monetary compensation to the victim, in accord with the injunctions of Islam; nature of the injury suffered by the victim and punishment provided therefor, by itself, do not substitute or override primary punishment prescribed for murderous assault. Criminal petition is converted into appeal and allowed; impugned order dated 07.07.2020 is set aside and bail granted to the respondents is cancelled.

Judge

Judge

Islamabad, the
3rd February, 2021
Azmat/-