

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.77-P OF 2020

(Against the order of the Peshawar High Court, Peshawar dated 22.06.2020 passed in Cr. M.B.A No.1316-P/2020)

Imtiaz ... **Petitioner(s)**

Versus

Azam Khan and others ... **Respondent(s)**

For the Petitioner(s): : Mr. Muhammad Jamal Afridi, ASC

For the Respondent(s): : Mr. Hussain Ali ASC
Respondents in person

For the State: : Mr. Zahid Yousaf Qureshi, Addl: AG
KPK
Mr. Hidayat Khan, SI Police Station
Mathra District Peshawar

Date of Hearing : 08.10.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:-Petition for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the order impugned dated 22.06.2020 passed in Cr.M.B.A No.1316-P/2020.

2. The respondents were booked in case bearing FIR No.903/17 dated 06.11.2017 offence u/s 302/324/34 PPC registered with Police Station Mathra, District Peshawar at the instance of Imtiaz s/o Qadir Khan, complainant.

As per allegation against the respondents is that they in furtherance of their common intention while armed with knife attacked with their respective weapon causing injuries on the person of Imtiaz

complainant, Qadir Khan his father and Rafi Ullah real uncle. Qadir Khan father of the complainant succumbed to injuries on his way to hospital. The respondents became fugitive from law hence, they were arrested by the police after the lapse of 02 years and 03 months. The respondents filed their post arrest bail before the learned trial court which was dismissed by the learned ASJ-XI, Peshawar vide order dated 19.02.2020. The respondents being aggrieved by the order of learned ASJ-XI, Peshawar filed a Cr.M(BA) bearing No.396-P/2020 before learned Peshawar High Court, Peshawar and the same was entrusted to learned single bench. The learned single bench after taking into consideration of the facts and circumstances disposed of the petition with the direction to the learned trial court not to be prejudice by the earlier order of dismissal passed on 19.02.2020 however the matter was sent back on the ground that proper sections of law regarding causing hurt to both injured were not added by the Investigating Officer. In the second round of litigation, the respondents moved another application for post arrest bail which was entrusted to ASJ-III, Peshawar. The learned ASJ-III, Peshawar vide order dated 06.05.2020 dismissed the petition for post arrest bail on the ground that the sections 302/324/337-D PPC do fall within the prohibitory clause of section 497 Cr.PC. The respondents challenged the order of learned ASJ-III, Peshawar before Peshawar High Court, Peshawar through Cr.M.B.A No.1316-P/2020 which was entrusted to learned single bench. It is pertinent to mention here that learned counsel appearing on behalf of the respondents while filing the second petition before Peshawar High Court, Peshawar did not disclose that earlier petition was filed before this Court and the same was entrusted to another learned single bench. The note mentioned in the petition is reproduced as under: -

“As per instruction of my client certified that no such bail application has been filed by the petitioner, before this Hon'ble Court.”

The learned single bench vide order dated 22.06.2020 granted post arrest bail to the respondents on the basis that the intention of respondents to kill the injured and applicability of section 324 PPC as well as sharing of common intention with principal accused are yet to be determined and that is to be done exclusively by the learned trial court hence, instant petition for cancellation of concession of bail extended to respondents.

3. At the very outset, it has been argued by the learned counsel that the bail granting order passed by the learned trial court dated 22.06.2020 is not sustainable in the eyes of law. It has been further argued that the learned counsel while moving the bail petition has not properly informed the office regarding the earlier disposal of the petition of the respondents and has actually concealed the real facts just to defeat earlier filing of the petition which was entrusted to another learned single bench. Contends that the same is clear violation of principle laid down in **PLD 1986 SC 173** (*The State through AG NWFP vs, Zubair and 04 others*). Further contends that on merits, the respondents were ascribed injury which do fall within prohibitory clause of section 497 Cr.PC and the finding given by the learned single bench are artificial in nature. Contends that the gross injustice has been occasioned due to order passed by the learned single bench hence, the order is not sustainable in the eye of law in any manner. The learned counsel has relied upon case law reported in **PLD 2015 SC 66** (*Ghulam Qammer Shah vs, Mukhtiar Hussain and others*) and **2020 SCMR 937** (*Bilal Khan vs, The State through PG Punjab*).

4. On the other hand, learned counsel appearing on behalf of the respondents states that in the earlier application, the matter was

remanded back for the insertion of certain offences which were not incorporated by the Investigating Officer. Contends that the order passed by the learned single bench is sustainable and the reasoning assigned is justifiable under the law. Contends that the principle for grant of bail and cancellation are entirely on different footing and as such, the courts are always reluctant to accept the petition for cancellation of bail.

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

There is no denial to this fact that respondents were admitted to bail after arrest by a single bench in second round of litigation. In the earlier round of litigation, the post arrest bail of the respondents was dismissed by learned ASJ-XI, Peshawar whereas the second bail application which was challenged before learned Peshawar High Court, Peshawar and the learned single bench sent back the matter to the learned trial court not due to any reasons except that the appropriate section as per law were not incorporated, which might have ensued gross injustice to the complainant and as such, the matter was sent back for addition of the relevant provision of law in the police record. That after the insertion of the relevant provision of law in the second round of litigation, the matter was assigned to learned ASJ-III, Peshawar. It is strange enough that it has now established that the bail application if earlier decided by a court, the same cannot be entrusted to any other court except on the ground that the other court was not available. This was not taken care of even at the bail stage before the court of learned ASJ whereas in the second round of litigation, the learned counsel appearing on behalf of the respondents intentionally avoided to disclose the filing of earlier petition before learned Peshawar High Court, Peshawar and the adjudication of the same by a different bench and it was assigned to

another court which was clear violation of **PLD 1986 SC 173** (*The State through AG NWFP vs, Zubair and 04 others*). Apart from this, the learned single bench has not taken into consideration the allegation against the respondents and the injuries ascribed to them. It is an admitted fact that one of the injured PW had undergone surgical intervention and as such, the provision of section 337-D PPC was added. The finding given by the learned single bench qua the applicability of section 324 PPC and section 34 PPC qua the common intention of the accused person is based upon artificial reasoning which to us was not required at this stage otherwise it is established principle of law that while adjudicating a matter regarding the bail only tentative assessment has to be made which has been established while enunciating the same by this Court from time to time in various judgments including **PLD 2015 SC 66** (*Ghulam Qammer Shah Vs, Mukhtiar Hussain and others*) and **2020 SCMR 937**(*Bilal Khan vs, The State through PG Punjab*) otherwise the respondents remained absconder for more than 02 years and 03 months which aspect has altogether ignored by the learned single bench.

7. These are the reasons of our short order of even date which reads as under: -

“For the reasons to be recorded later, this petition is converted into appeal and is allowed. The bail granted to the respondents through the impugned judgment of the Peshawar High Court, is recalled and the respondents are directed to be taken into custody forthwith.

Judge

Judge

Islamabad,
08.10.2020
Approved for reporting
Syed Rashid Maqsood/