

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 203 OF 2021

(On appeal against the order dated 12.01.2021 passed by the Peshawar High Court, Bannu Bench in Cr.Misc.BA No. 651-B/2020)

Jahanzeb Khan

... Petitioner

VERSUS

Umer Zahid and another

... Respondents

For the Petitioner:

Sh. Muhammad Sulman, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent (1):

Mr. Sher Afzal Khan Marwat, ASC
Mr. Shahid Qayyum, ASC a/w respondent
No. 1

For the State:

Mr. Anis Muhammad Shahzad, State
Counsel
Mr. Yar Muhammad, ASI

Date of Hearing:

30.11.2021

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 cancellation of bail granted to the respondent Umer Zahid by the learned Peshawar High Court, Bannu Bench vide order dated 12.01.2021 in case registered vide FIR No. 430 dated 28.06.2020 under Sections 302/324 PPC at Police Station Karak, District Karak in the interest of safe administration of criminal justice.

2. As per the contents of the crime report, on the fateful day and time, the respondent while armed with firearm fired at the complainant and his brother Shahzeb Khan and due to the firing,

the brother of the complainant got hit and lost his life whereas the complainant remained unhurt.

3. *At the very outset, it has been argued by learned counsel for the petitioner that the respondent was the single accused, who was directly charged for the murder of brother of the complainant in the promptly lodged crime report. Contends that there was previous blood feud between the parties, which led to the commission of the crime. Contends that the occurrence took place in broad daylight and the parties were known to each other, therefore, there is no chance of mis-identification. Contends that the Call Data Record (CDR) of the respondent also shows that he was present at the scene of occurrence at the relevant time. Contends that the respondent remained absconder for a period of six months, which shows his involvement in the crime. Contends that the offence with which the respondent is charged with falls within the prohibitory clause of Section 497 Cr.P.C. and the normal penalty provided under the statute is death. Lastly contends that the learned High Court did not take into consideration these aspects of the matter and has granted bail to the respondent on surmises and conjectures, therefore, the grant of bail on assumptions may be cancelled.*

4. *On the other hand, learned counsel for the respondent has defended the impugned order whereby post-arrest bail was granted to the respondent. He contended that the considerations for grant of bail and cancellation whereof are entirely on different footings and once bail has been granted to an accused on the basis of tentative assessment of evidence available on record then for its cancellation exceptional strong reasons are required. He contended that keeping in view the nature and locale of the injury on the body of the deceased, the same could not have been sustained because the deceased was in a bunker at the time of occurrence. Contends that the complainant was not present at the time of occurrence and to cover this lapse, he got tampered the postmortem report and changed the time of postmortem examination.*

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

There is no denial to this fact that the respondent is nominated in the crime report, which is promptly lodged against him wherein a specific accusation of causing firearm injury to the brother of the complainant which resulted into his death. Admittedly, the occurrence has taken place on the rooftop of the house of the complainant and the matter was reported to the Police after lapse of 1 hour and 45 minutes whereas the inter se distance between the place of occurrence and the Police Station was 18-19 kilometers. This aspect lends support to the fact that the matter was reported to the Police without any inordinate delay. Previous enmity between the parties is not denied. The instant occurrence has taken place in broad daylight whereas the parties are known to each other, therefore, there is no chance of any mis-identification, which further gives strength to the prosecution case. The locale of injury ascribed to the respondent is fully supported by medical evidence. We have noticed that the reasoning advanced by the learned High Court while granting bail to the respondent is artificial in nature, which does not imprint any second thought in the mind of a prudent man that the occurrence has taken place in another manner not disclosed while lodging the crime report. The argument of the learned counsel for the respondent that the considerations for the grant of bail and cancellation whereof are entirely on different footings has no second thought. However, we are under obligation to attend to the facts and circumstances of the lis, which is brought before us and to evaluate the same in the manner so that no injustice is done to either of the party. In the instant case, the learned High Court has not given any justiciable reasoning to bring the case of the respondent within the ambit of Section 497(2) Cr.P.C calling for further probe into his guilt rather based its order upon assessment of the facts, which does not have any nexus with the guidelines enunciated by the superior courts from time to time with reference to grant of bail. In our opinion, in the instant case the learned High Court while granting bail to the respondent has erred in law and fact and has passed an order which is based upon conjectures and surmises, therefore, the same is not sustainable in the eyes of law. As a consequence, we convert this petition into appeal, allow it, set aside the impugned order and cancel the bail granted to the respondent by the learned

High Court vide impugned order dated 12.01.2021. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
30th of November, 2021
Approved For Reporting
Khurram