

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 509 OF 2021**

*(On appeal against the order dated 26.04.2021 passed by the Peshawar High Court, Bannu Bench in Cr. Misc. (BA) No. 190-B/2021)*

Akhtar Ullah @ Akhtar Ali

... Petitioner

**VERSUS**

The State and another

... Respondents

For the Petitioner: Mr. Farman Ali Khattak, ASC

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

Date of Hearing: 16.06.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through the instant criminal petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks leave to appeal against the impugned order of learned Peshawar High Court, Bannu Bench dated 26.04.2021, with a prayer to grant post-arrest bail in case FIR No. 05 dated 12.01.2021 under Sections 324/427/34 PPC at Police Station Shah Saleem, District Karak in the interest of safe administration of criminal justice.

2. As per contents of the crime report, it is alleged that the petitioner while armed with a Kalashnikov, on the asking of co-accused Rehman Ullah, made a fire shot, which landed on the right heel of injured PW Muhammad Wajid (complainant of the case), as a consequence whereof, the instant FIR was got registered by him. Petitioner filed a petition for post-arrest bail before the learned Additional Sessions Judge, Karak, which was dismissed vide order dated 13.04.2021. The order of learned Additional Sessions Judge was challenged by the petitioner before the learned Peshawar High Court, Bannu Bench by filing a criminal miscellaneous application which too met the same fate vide the order impugned. Hence, the instant petition for leave to appeal.

3. Learned counsel for the petitioner has argued that petitioner has been falsely roped in this case against the actual facts

*and circumstances of this case; that the motive ascribed to the petitioner is not substantiated from the record; that though petitioner has been ascribed direct role of causing a firearm injury on the person of injured PW (complainant) but according to medico legal report, the dimension of the injury as well as the name of the expert who examined the injured PW has not been mentioned, which is spelled out from Page 18 of the instant petition; that as per prosecution, the injured PW was admitted to the hospital and examined on 12.01.2021, whereas he was discharged from the hospital on 25.01.2021 but the details of the same are not mentioned anywhere. It has further been argued that the locale of injury is on the non-vital part which clearly reflects that the petitioner had no intent to commit the murder of injured PW (complainant) and the provisions of section 324 PPC are not attracted in this case. Lastly, it has been argued that petitioner is behind the bars since 23.02.2021, investigation of the case is complete and he is no more required for the purpose of investigation and on this score alone, he is entitled for the concession of bail.*

4. *On the other hand, learned Additional Advocate General, KPK has supported the impugned order declining bail to the petitioner. Learned Law Officer contended that the petitioner is specifically named in the crime report with allegation of causing a firearm injury on the person of complainant with a lethal weapon; that an empty of 7.62 bore was recovered from the spot which clearly shows that the injured PW was fired at by the petitioner with a Kalashnikov. He, however, frankly conceded that during the course of investigation, no recovery of alleged weapon has been affected from the petitioner.*

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

*There is no denial to this fact that the occurrence has taken place in the broad daylight, which was promptly reported. As far as the allegation against the petitioner is concerned, there are certain aspects of the case which require determination to arrive at a conclusion whether the petitioner is entitled for the relief sought for. It has been observed by us that the injury ascribed to the petitioner on the person of complainant is surely on his right heel. During the course of medical examination of complainant, the Doctor has not given any details regarding dimension of the injury. Though one*

empty of 7.62 bore was secured from the spot by the investigating agency, but no recovery of alleged weapon was effected from the petitioner. Therefore, the recovery of crime empty from the spot becomes inconsequential and does not have any legal force. Perusal of medico legal report reveals that the same is on a plain paper and name and designation of the Doctor who examined the injured PW have not been mentioned. As per prosecution, the injured PW Muhammad Wajid (complainant) remained admitted in the hospital after the occurrence for a couple of days but discharge slip is not available on the record. In Muhammad Umar Vs. The State and another (PLD 2004 SC 477), while granting bail to accused, this Court observed that a perusal of medical certificate of injured revealed that allegedly the accused (petitioner) fired upon the outer side of the right leg's middle part of the injured Shahid Iqbal, therefore, prima facie, he had no intention to fire upon the vital part of the injured for the purpose of launching murderous assault. Even otherwise, the question qua applicability of section 324 PPC would be determined by the learned trial Court after recording of evidence. All these aspects of the case if evaluated conjointly, the case of petitioner squarely becomes one of further enquiry falling within the ambit of section 497(2) of Cr.P.C. Even otherwise, the petitioner is behind the bars since 23.02.2021, the investigation of the case is complete and 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 bond in the sum of Rs.200,000/- (rupees two hundred thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
16<sup>th</sup> of June, 2021  
Approved For Reporting  
**Khuram**