

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Criminal Petition No.687 of 2020

*(Against the judgment dated 20.05.2020 passed by
the Peshawar High Court Bannu Bench in CrI. Misc.
BA No.205-B/2020)*

Muhammad Khan

...Petitioner(s)

Versus

Iqbal Khan & another

...Respondent(s)

| | |
|------------------------|--|
| For the Petitioner(s): | Mr. Salah-ud-Din Malik, ASC/AOR |
| For the State: | Ms. Aisha Tasneem, ASC with Ghousullah, SI/I.O. P.S. Pezu Lakki Marwat. |
| For the Respondent(s): | Mr. Saleem Ullah Khan Ranazai, ASC with respondent No.1 in person. Mr. Mahmood Ahmed Sheikh, AOR |
| Date of hearing: | 08.02.2021. |

ORDER

Qazi Muhammad Amin Ahmed, J.- Impugned herein is order dated 20.05.2020 by a learned Judge-in-Chamber of Peshawar High Court at Bannu Bench, admitting Iqbal Khan respondent, accused in a case of homicide, to post arrest bail; according to the prosecution, he, on the fateful day, alongwith his brother Ayub Khan, armed with Kalashnikovs, fatally targeted Fazal Rehman, deceased, in the backdrop of an ongoing blood feud; witnesses survived the assault unscathed. Autopsy confirmed solitary fire shot in the left eye with corresponding exit. During spot inspection, the Investigating Officer secured 30 casings of Kalashnikov. The accused avoided arrest, however, the respondent was arrest after almost four years of the incident, co-accused still away from the law. The High Court, ignoring respondent's absconsion, granted him bail on the ground that given the joint role it was far from being clear as to whose shot hit the deceased. A position defended by the learned counsel for the respondent.

2. Heard. Record perused.
3. Totality of circumstances does not admit space, that too, within the restricted scope of tentative assessment to hypothetically absolve the

respondent from the indivisibility of his role of being in the community of intention with the allegation of active participation in the crime.

Though the absconsion by itself is not proof of guilt nor insurmountably stands in impediment to release of an offender if otherwise a case for grant of bail is made out, nonetheless, it is a circumstance which cannot be invariably ignored without having regard to peculiarity of circumstances in each case as there are situations that possibly entail consequences. In the present case, both the respondents opted to avoid the law; one of them is yet not arrested, thus, in the absence of any investigative analysis or conclusion, there was no occasion for the High Court to itself presumptuously extricate the respondent from the web, woven by the identity of circumstances jointly hovering upon both the accused; the impugned exercise transcends beyond the barriers of tentative assessment; it throws the entire prosecution case to the wind, an option neither contemplated by law nor falling with the remit of "*further inquiry*"; a case for intervention stands made out. Criminal petition is converted into appeal and allowed; impugned order dated 20.05.2020 is set aside and bail granted to the respondent is cancelled.

Judge

Judge

Islamabad, the
8th February, 2021
Not approved for reporting
Azmat/-