

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 1720 OF 2022**

(On appeal against the judgment dated 14.11.2022  
passed by the Peshawar High Court, Bannu Bench in  
BA No. 543B/2022)

Noor Kamal and Asad Kamal @ Syed Kamal

... Petitioners

**VERSUS**

The State and another

... Respondents

For the Petitioners:

Mr. Ahmad Ali, ASC

Mr. Anis Muhammad Shahzad, AOR

For the State:

Sardar Ali Raza, Addl. A.G.

Mr. Amir Khan, SHO

Mr. Waheed Ullah, I.O.

For the Complainant:

In jail

Date of Hearing:

30.03.2023

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.**- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment dated 14.11.2022 passed by the learned Single Judge of the Peshawar High Court, Bannu Bench, with a prayer to grant post-arrest bail on statutory ground in case registered vide FIR No. 515 dated 13.05.2021 under Sections 324/34 PPC at Police Station Naurang, Lakki Marwat, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioners is that they while armed with firearms launched a murderous attack on the complainant party and made fire shots, which hit the complainant and the witness Mashal Khan on left rib and left knee respectively. After their

arrest, the petitioners approached the learned Trial Court for grant of post-arrest bail but the learned Trial Court dismissed their bail petition vide order dated 21.06.2021, which was upheld by the learned High Court vide judgment dated 27.08.2021. Thereafter, the petitioners filed fresh bail petitions before the learned Trial Court on statutory ground, but the same were dismissed vide order dated 20.07.2022. This order was upheld by the learned High Court vide impugned judgment dated 14.11.2022. Hence, this petition seeking leave to appeal.

3. At the very outset, it has been argued by learned counsel for the petitioners that the petitioners have been falsely roped in this case against the actual facts and circumstances of the case. Contends that the petitioners are behind the bars for the last more than 22 months and the conclusion of trial is not in sight in near future, therefore, they are entitled for the grant of post-arrest bail on statutory ground. Contends that the delay in conclusion of the trial is not attributable to the petitioners rather the same occasioned due to the prosecution. Contends that the co-accused of the petitioners has been granted post-arrest bail by this Court, therefore, the petitioners also deserve the same treatment to be meted out. Contends that in-fact the complainant party was aggressor and two persons from the petitioners' side have been done to death by the complainant party and a crime report in this regard was promptly lodged. Contends that the instant crime report is an attempt to pressurize the petitioners' side to gain ulterior motives.

4. On the other hand, learned Law Officer defended the impugned order by contending that the petitioners have been specifically nominated in the crime report with a specific allegation of attempting to take life of the complainant, therefore, they do not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the record with their assistance.

As per the contents of the crime report, the allegation against the petitioners is that they while armed with firearms launched a murderous assault on the complainant party and made fire shots, which hit the complainant and the witness Mashal Khan on left rib and left knee respectively. However, it is stance of the petitioners that in-fact the complainant party was aggressor and committed murder of two persons from petitioners' side. The petitioner Noor Kamal has also got registered FIR bearing No. 514 dated 13.05.2021 under Sections 302/324/34 PPC at Police Station Naurang, Lakki Marwat against the complainant party. We have noted that in the instant case only a general role has been ascribed to the petitioners and co-accused and no details have been given as to which accused fired at which injured. Admittedly, the petitioners did not repeat the fire, which *prima facie* shows that they had no intention to kill the victims. The petitioners are behind the bars since 14.05.2021 and despite lapse of more than 22 months, the conclusion of trial is not insight in near future. Learned counsel for the petitioners informed us that the delay is not attributable to the petitioners. On our specific query, learned Law Officer admitted the stance of the petitioners. A plain language of proviso 3 to sub-Section (1) of Section 497 Cr.P.C. clearly reveals that in cases of non-bailable offences, which are not punishable with death where the accused has been detained for a continuous period exceeding one year and it is found that the delay in the trial has not been occasioned due to any act or omission of the accused, the Court shall direct that the accused be released on bail. This Court has time and again held that liberty of a person is a precious right, which cannot be taken away without exceptional foundations. The co-accused of the petitioners namely Usman, who was ascribed the similar role, has been granted post-arrest bail by this Court, therefore, the petitioners are entitled for the concession of post-arrest bail on this score alone. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioners squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into their guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The petitioners are admitted to bail subject to their furnishing bail bonds in the sum of Rs.100,000/- each with one surety each in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
30<sup>th</sup> of March, 2023  
Approved For Reporting  
Khurram