

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 458 OF 2021

(On appeal against the order dated 12.04.2021 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Cr.M(BA) No. 160-M/2021)

Hussain Ahmed

... Petitioner

VERSUS

The State etc

... Respondents

For the Petitioner: Raja Inaam Ameen Minhas, ASC
Syed Tariq Aziz, AOR

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

Date of Hearing: 14.06.2021

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 post-arrest bail in case registered vide FIR No. 46 dated 29.05.2020 under Section 302/34 PPC at Police Station Nawagai, District Bajaur. The same relief was denied to him by the learned Trial Court as also by the High Court vide impugned order.

2. As per contents of the crime report, there was a land dispute between the complainant and the petitioner and his co-accused. On the fateful day and time, the accused were plowing the disputed land with tractor when complainant along with the deceased went there and asked them to leave the land. Upon this the accused person fired at the head of the deceased with a pistol, due to which he lost his life.

3. Learned counsel for the petitioner inter alia contended that in the FIR no specific role has been attributed to the petitioner and only a general allegation has been leveled; that nothing has been mentioned in the FIR as to whose fire hit the deceased; that under the similar circumstances, the co-accused has been granted bail, therefore, the petitioner also deserves the same concession;

that neither any empty nor the weapon of offence has been recovered from the petitioner and that the investigation was conducted dishonestly and real facts were suppressed just to frame the petitioner in the false case.

4. *On the other hand, learned Law Officer has defended the impugned judgment. He mainly contended that as per the law laid down by the superior courts, the order of the Trial Court is not to be interfered with unless there is perversity in the order. He added that during investigation, the role of causing fire shot was attributed to the petitioner, therefore, he is the main accused and does not deserve any leniency by this Court.*

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

6. *Admittedly, no specific role has been ascribed to the petitioner in the FIR and the allegation leveled against him is of general nature. It was during investigation that the role of fire shot was attributed to the petitioner. However, it was the case of the petitioner that the Police Diaries were manipulated by the Police. In paragraph 6 of the impugned order, the learned High Court has admitted this fact but it did not take into consideration this aspect of the matter on the pretext that only tentative assessment of the available record is required. Admittedly vide order dated 03.02.2021 passed by the learned Trial Court, the co-accused of the petitioner namely Liaquat Ali has been granted bail by the learned Trial Court on the ground that there is no mention of eye-witnesses in the FIR and there is conflict between the role assigned to him in the FIR and the statements made by the eye-witnesses. On our query, learned Law Officer admitted that the record was tampered with during the investigation. In these circumstances, when the learned High Court had admitted about the tampering of the record, while following the rule of consistency the petitioner is also entitled for the same relief. Reliance is placed on the case reported as Muhammad Fazal @ Bodi Vs. The State (1979 SCMR 9). Admittedly, neither any empty was taken into possession from the place of occurrence nor the weapon of offence has been recovered from the petitioner. From the tentative assessment of the record and keeping in view the provision of*

Section 497(2) Cr.P.C, we are of the considered view that the petitioner has made out a case squarely falling within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C. As a consequence, we convert this petition into appeal, allow it and admit the petitioner to post-arrest bail, subject to his furnishing bail bonds in the sum of Rs.500,000/- (rupees five hundred thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the
14th of June, 2021
Not Approved For Reporting
Khurram