

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Justice Amin-ud-Din Khan
Justice Syed Hasan Azhar Rizvi

Criminal Petition No. 1033 of 2025

*(Against the Order dated 20.06.2025 passed
by the Peshawar High Court, Peshawar in
Crl. Misc. BA No. 1746-P/2025)*

Sahad Petitioner

Versus

Mst. Afsheen and another Respondents

For the Petitioner : Mr. M. Amjad Iqbal Qureshi, ASC
Mr. Shanzeb Khan, ASC

For the State : Mr. Altaf Khan, Addl. AG KPK
a/w Paseel Khan, DSP
& Nomair Khan, Inspector

For the Complainant : Mr. Abid Ali, ASC

Date of Hearing : 18.08.2025

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this Criminal Petition for Leave to Appeal, the Petitioner has called in question the Order dated 20.06.2025 [**Impugned Order**] passed by the Peshawar High Court at Peshawar in Criminal Miscellaneous Bail Application No. 1746-P of 2025 whereby the High Court, while upholding the Order dated 15.05.2025 passed by the learned Additional Sessions Judge-IV, Swabi, declined bail to the Petitioner as well as his co-accused, Shahid. The proceedings arose out of an FIR No. 501 of 2025 [**instant FIR**], registered at Police Station, Swabi on 04.04.2025 at 10:00 AM, against the Petitioner, accused Shahid and Basit, alleging offence under Sections 302 and 34 of the Pakistan Penal Code, 1860.

2. The brief facts of the case as alleged in the instant FIR are that on 03.04.2025 at 23:20 hours, Abu Bakar [**the Deceased**], aged 15/16 years, was allegedly taken by the accused Basit to the Petitioner and accused Shahid. It is alleged that all three accused, armed with firearms, proceeded towards the

thoroughfare near Masjid Qasim Khel where, owing to a family property dispute, they opened fire upon the Deceased with the common intention to commit *qatl-i-amd*. The Complainant, who was present at the site and claims to have witnessed the incident under the bulb light, shifted the Deceased to DHQ Hospital, Swabi and subsequently lodged the instant FIR, nominating the three accused, including the present Petitioner, for the murder of the Deceased. During the said occurrence accused Basit sustained a firearm injury for which a cross-version report was lodged *vide* DD No. 16 of even date pertaining to the instant FIR.

3. Accused Basit was granted bail by the learned Additional Sessions Judge-V, Swabi *vide* Order dated 22.04.2025. The Petitioner along with accused Shahid moved a bail application before the learned Additional Sessions Judge-IV, Swabi, which was dismissed on 15.05.2025. Subsequently, on 19.05.2025, the Petitioner and accused Shahid again filed a bail application before the learned Additional Sessions Judge-V, Swabi, which too was dismissed *vide* Order dated 24.05.2025. Being aggrieved, the Petitioner and accused Shahid filed bail application before the Peshawar High Court at Peshawar which also met with the fate of dismissal *vide* Order dated 20.06.2025, culminating in the Impugned Order now under challenge before this Court.

4. Learned counsel for the Petitioner contends that the Complainant has attributed a generalized allegation of firing to all three accused persons without specification of weapons or their individual roles. It is urged by the learned counsel that the Complainant is the only eyewitness of the occurrence and the Petitioner has been falsely implicated with *mala fide* intention; that one of the co-accused Basit having same role in the FIR has already been enlarged on bail; that the prosecution story suffers from material contradictions and that the allegation of indiscriminate firing leaves the actual assailant yet to be identified by the prosecution.

5. The learned Law Officer, assisted by the learned counsel for the Complainant, submits that all three accused persons were specifically nominated in the instant FIR with a direct allegation of firing upon the Deceased. It is argued that while the instant FIR was lodged on 04.04.2025, the Petitioner was arrested on 15.05.2025, and shortly thereafter, on 17.05.2025, the weapon allegedly used in the offence was recovered. Recovery of weapon directly connects the Petitioner with the commission of the offence. It is further submitted by the Complainant's counsel that the case of accused Basit, who was admitted to bail earlier, stands on a different footing as no recovery was affected from him. The learned counsel also emphasizes that the Complainant being the mother of the Deceased personally witnessed the occurrence. Lastly, it is urged that the incident arose out of a protracted family property dispute and culminated in the brutal murder of a minor son of the Complainant, which by its gravity disentitles the Petitioner from the concession of bail.

6. Upon a query by the Court from the learned Law Officer regarding report of the Forensic Science Laboratory [**'FSL'**] *qua* weapon allegedly recovered from the Petitioner, the learned Law Officer initially submitted that the report was found negative. The learned Law Officer placed on record a photocopy of the FSL report which confirmed that the crime empties recovered from the place of occurrence do not match with the weapon allegedly recovered from the Petitioner.

7. Arguments heard. Record perused. Admittedly, three persons have been charged by the Complainant for committing the murder of her deceased son by attributing generalized role of firing to all of them without specification of the firearm or the person who fired such gunshots. A cross-version has also been lodged by accused Basit who allegedly sustained gunshots.

8. On a tentative assessment of the material available on the record, particularly the FSL report referred to and photocopy whereof was produced by the learned Law Officer, it appears that the crime empties recovered from the place of occurrence do

not match with the weapon allegedly recovered from the present Petitioner. The inconsistency between the recovered crime empties and the weapon attributed to the Petitioner renders the recovery doubtful, all the more so as the said report, when produced by the learned Law Officer, was neither objected to nor denied by the learned counsel for the Complainant. Any opinion regarding the evidentiary value of such recovery, therefore, cannot be formed without recording evidence at the trial. It is also pertinent to observe that the Complainant, who is the sole eyewitness, did not specify in her statement the distinct role played by each of the accused. Her narration was general in nature, attributing no specific or individual role to the Petitioner which makes the case fit for further inquiry. In view whereof, we are of the considered opinion that the case of the Petitioner squarely falls within the ambit of section 497(2), Cr.P.C. thereby entitling him to the concession of bail on the ground of further inquiry into his guilt.

9. For the above reasons, this Petition is converted into an appeal and allowed. The Impugned Order of the High Court dated 20.06.2025 is set aside and the Petitioner is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs. 200,000/- (two lacs only) with one surety in the like amount to the satisfaction of the trial court.

10. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

Judge

Judge