

2011 M L D 1017

[Peshawar]

Before Mazhar Alam Khan Miankhel, J

TAZEEM AKBAR---Petitioner

Versus

THE STATE and another---Respondents

Bail Criminal Miscellaneous Application No.45 of 2011, decided on 11th March, 2011.

Criminal Procedure Code (V of 1898)----

----S. 497(2)-Penal Code (XLV of 1860), Ss.302/148/149---Qatl-e-amd---Bail, grant of---Further inquiry---Besides three persons named in the F.I.R., including accused, some 5/6 other unknown persons were also charged for giving hatchet blows to the deceased---Difference was noticed between ocular version and medical evidence---Mere presence of accused at the spot or nomination of accused in the F.I.R. without any specific role in the commission of offence, would not be sufficient to refuse bail to the accused---Involvement of accused persons with their common intention in the commission of the offence, would require further probe into their guilt by recording of evidence; and it would be the Trial Court to determine their such involvement---Case against accused, in circumstances, required further probe---Person could not be left to be rotten in the bunk beds of jail in such like accusation---If the prosecution would be successful in proving charge against accused, he could well be punished for the amount of his guilt---Case for grant of bail having been made out, accused was admitted to bail, in circumstances.

Babar Khan Yousafzai and Mahmood Hassan Khan for Petitioner.

Obaid Razzak, A.A.-G., for the State.

Mian Arshad Ian for the Complainant.

Date of hearing: 11th March, 2011.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.---The petitioner herein after refusal of bail from the lower forum, seeks his release on bail in case F.I.R. No.756 dated 26-9-2010 Police Station Nowshera Cantt. registered under sections 302/148/149, P.P.C.

2. One Ihsan-ur-Rehman reported the matter to the Sub-Inspector on duty in D.H.Q. Hospital Nowshera that on 26-9-2010 at 8-45 a.m. he along with his brother Zain-ul-Abideen and Muhammad Shoaib, their cousin were going to Bus Stop of Mohallah Hakeem Abad near Rickshaw Stand. When they reached the place of occurrence, Sajjad, Tanzeem and Nadeem sons of Saeed-ur-Rehman along with 5/6 other persons duly armed with hatchets attacked his brother Zain-ul-Abideen, who received injury on his head. Motive for the occurrence was narrated to be a dispute over cutting of some trees. The injured was taken to 'the DHQ Hospital Nowshera from the spot. The injured was then, being in critical condition referred to L.R.H., Peshawar who succumbed to his injuries on 3-10-2010 and resultantly, the case under aforesaid sections of law was registered against all the accused.

3. Learned counsel for the petitioner by alleging the innocence of the accused/petitioner contended that he has falsely been implicated in the case; there is nothing on the record to infer that the accused/ petitioner was involved in the commission of said offence; there is no independent ocular evidence available on the record to 'connect the accused/petitioner with the commission of offence; the only injury on the person of the deceased as per medical report was attributed to his co-accused Sajjad as explained in the site plan. The accused/petitioner was shown to be present at point No.5 in the site plan allegedly armed with club/stick. The medical evidence reflects single injury with axe. The ocular account given by the prosecution and the medical evidence contravene each other making the case of accused/petitioner as that of further inquiry.

4. As against that learned counsel for the complainant submitted that all the accused named in the F.I.R. with their common intention attacked the deceased which establishes their prima facie involvement in the commission of offence and at this stage, the accused is not entitled for any concession. His next contention was that since challan in the case is complete so directions to the trial Court be given to conclude the trial within shortest possible time. Learned AAG present in court also supported the version of learned counsel for the complainant.

5. Learned counsel for the parties as well as learned A.A.-G. for the State were heard and record of the case was perused. Record of the case would reveal that besides the three persons named in the F.I.R. including the petitioner some 5/6 other unknown persons were also charged for giving hatchet blows to the then injured now deceased. The version given in the F.I.R. apparently reflects that all the persons armed with axes attacked the deceased but the medical evidence available on the record would reflect only one hatchet blow on the head of the deceased and that too was attributed to one Sajjad as explained by the complainant when the I.O. was preparing the site plan. The accused in the site plan was shown to be in possession of club/stick instead of hatchet. Since no other injury of any nature has been shown by the doctor on the person of the deceased, the involvement of the accused/petitioner for the commission of offence would require further probe. entitling him to the concession of bail. Mere presence of an accused at the spot or nomination of the, accused in the F.I.R. without any specific role in the commission of offence would not be sufficient to refuse bail to an accused person. Their involvement with their common intention in the commission of the offence would require further probe into their guilt by recording of evidence and it would be the trial Court to determine their such involvement. In

such-like accusation a person cannot be left to be rotten in the bunk beds of jail. If the prosecution would be successful in proving charge against him he could well be punished for the amount of his guilt. Settled principle laid down by the superior courts in such-like cases is bail and not the jail.

6. So without going deep into the merits of the case, a case for bail has been made out, hence this petition for bail is allowed and the petitioner (Tazeem Akbar) is directed to be released on bail on furnishing bail bonds in the sum of Rs.500,000 (Rupees five lacs), with two sureties, each in the like amount, to the satisfaction of the Illaqa Judicial Magistrate/Magistrate on duty. The sureties shall be reliable and men of means. These are the reasons for short order dated 11-3-2011. Bail petition allowed.

H.B.T./146/P

Bail granted.