

JUDGMENT SHEET**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)****B.A. No. 733-M/2022****ORDER***Date of hearing: 18.10.2022**Petitioner:- (Sher Bahadar) by Mr. Alla-ud-Din,
Advocate.**Respondents: - (The State & another) by Mr.
Saeed Ahmad Aast: A.G and Nemo for the
complainant.*

MUHAMMAD IJAZ KHAN, J.- This order is directed to dispose of application filed by petitioner namely Sher Bahadar for grant of post arrest bail in case FIR No. 12 dated 24.03.2021 registered under sections 302, 34 PPC at Police Station Salarzai District Bajaur.

2. As per contents of the FIR, the complainant namely Manzoor has reported the matter to local police at DHQ hospital Khar whereby he has charged the present accused/petitioner namely Sher Bahadar along with other co-accused for committing the murder of his father namely Qayum Khan. Motive behind the occurrence was stated to be previous blood feud enmity between the parties.

3. Arguments of learned counsel for the petitioner as well as learned Astt: A.G. appearing on behalf of State were heard in considerable detail and the record perused with their able assistance.

4. The record would show that the complainant is not the eyewitness of the occurrence, however, in the FIR he has stated that the alleged occurrence has been witnessed by Irfan and Abdullah who on the second day of the occurrence have recorded their statements under section 161 Cr.P.C where too the present accused/petitioner has been charged for making effective firing at the deceased namely Qayum Khan. The prosecution has also shown recovery of eight empties of 7.62 bore from the scene of occurrence, however, such stance of the prosecution is totally belied by the medico-legal evidence of the deceased where the medical officer has opined as under;-

There was a large shuttered wound from left eyebrow to occipital which was linear lacerated in front half and in back half was having multiple irregular extensions. Bone of the skull was fractured into pieces and brain was coming out in the wound as a whole, having laceration of bones on brain matter. There was another 04 cm wound with irregular margins beneath bone of skull was cut on right parietal scalp. No

any burn, powder mark, hole of firearm injury was found on the skull or clothes.”

The record further shows that even the second opinion of the doctor was obtained by the Investigating Officer regarding the kind of weapon who accordingly opined as under;-

As the size and shape of wound was described on injury sheet. The definite object used is not clear.

In view of the above it cannot be said with certainty that the deceased has died because of the firearm injury and thus for the time being case of the accused/petitioner is one of further inquiry. In the case of “Syed Abdul Bagi Shah v/s The State” reported as 1997 SCMR 32, the Hon’ble Apex Court has held that the benefit of the conflict in the ocular and medical evidence from the tentative assessment thereof, will weigh in favour of the petitioner while disposing of his application for bail. Similarly, in the case of “Saeed Khan v/s The State” reported as 2011 SCMR 1392, the Hon’ble Apex Court has recorded similar observations by holding that there is a glaring contradiction between the F.I.R./ supplementary statement and the Medico-legal Certificate issued in respect of the injured victim inasmuch as according to the F.I.R./ supplementary statement the alleged

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