

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

Cr.Misc:/BA #195-B/2017

**Ghulam Ali
Vs
The State and another.**

JUDGMENT

Date of hearing _____ 31.05.2017 _____.

Appellant-Petitioner: **By Rashid Khan Dirma Khel, Advocate and Inam Ullah Khan Mandra Khel, Advocate.**

Respondent: **By Hujat Ullah Khan, Advocate & State**

By Mr. Shahid Hameed Qureshi, Addl:

AG.

ISHTIAQ IBRAHIM, J.--- Accused/ petitioner Ghulam

Ali seeks his release on bail in case F.I.R No.151 dated 06.03.2017, under section 302/324/404/34 P.P.C, Police Station Lakki Marwat.

2. Inayatullah Khan, complainant on 06.03.2017 at city Hospital, Lakki Marwat reported the matter to the effect that he alongwith son Hamayatullah, brother Abdullah Khan, Irfanullah were present in courtyard of their baithak. At 07.00 hours, accused/ petitioner Ghulam Ali and co-accused Abdur Rehman, duly armed with

Kalashnikov, repeater appeared. Accused/ petitioner Ghulam Ali fired at Abdullah Khan, due to which he was hit and injured, while co-accused Abdur Rehman fired at complainant his son Hamayatullah and Irfanullah, as a result of which Irfanullah sustained injuries. Outside the baithak, accused/ petitioner Ghulam Ali fired at Abdur Rehman, due to which he also sustained injuries. Accused/ petitioner also took away Kalashnikov and repeater from the said Abdur Rehman. The injured Abdullah and Abdur Rehman later on succumbed to injuries. hence the above mentioned F.I.R.

3. Arguments heard and record perused.

4. During investigation several persons from the locality, appeared before the investigation officer and alleged false implication of accused/ petitioner in this case, particularly, the eye-witnesses of the occurrence Sharifullah and the persons with whom the accused/ petitioner was present at the alleged time of occurrence. They also tried to record their statements under section 164 Cr.PC, with respect to innocence of accused/ petitioner and in

confirmation of his plea of alibi, as they want to support the version of accused/ petitioner their request was turned down and the investigation officer was directed to form his opinion in light of evidence collected in the case. The investigation Officer placed his name in the Column 2 of the challan. It is settled principle and rule that once an accused has been declared innocent during the course of investigation and is placed in Column 2, then he is no more an accused person nor he can be treated so unless and until after submission of challan the trial court takes cognizance and summon him for trial. No doubt, opinion of Investigating officer in the case are not binding upon the court and cannot be made the only basis for granting bail, but the Court would examine the material available on file and form his opinion. Reliance is placed on case titled **“Mohammad Ilyas Vs Ijaz Mohammad Batt and another”** **(1992 SC MR 1857)**, wherein it is held that:

“We propose to dispose of this petition on the short ground that respondent No.1 Ijaz Ahmad Butt is not an accused person so far as his name is not included in the challan in the column of accused persons but appears in column No.2 of the challan

because investigation agency was short of material against him. He himself on his own approached the trial Court for bail and on failure filed application in the High Court for that purpose. It appears that so far neither police has taken any steps to arrest him because for doing so police has to show that sufficient material is available against him and his name for that reason is to be taken out from column No.2 and put in the column of accused persons who are not in custody. Similarly trial court has not taken any steps to show that respondent No.1 Ijaz Ahmad butt was being treated as accused person.”

5. In addition to the above, the mode and manner of occurrence, disparity in medico-legal examination of the injured and the time of report, could be resolved after recording of evidence, till then the case of accused/petitioner requires further inquiry under section 497 (2) Cr.PC.

6. The accused cannot be kept in jail as punishment merely on the ground that he is directly charged for an offence falling under the prohibitory clause of section 497 Cr.PC, because a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but

no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on case titled “*Zaigham Ashraf Vs the State and others’ (2016 SCMR 18)*”, wherein it is held that:

“9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground.”

7. For the afore stated reasons this bail application is allowed, resultantly, accused/ petitioner Ghulam Ali is admitted to bail on furnishing bail bonds to the sum of Rs.6,00,000/- (Six lac) with two sureties each in

the like amount to the satisfaction of *Illaqa* Judicial
Magistrate/MOD.

Above are the reasons of my short order of the
even date.

Announced.
31.05.2017
Azam/P.S

J U D G E