

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.65-P/2018

Bhai Jan s/o Hameed Khan alias Metti,
r/o Kakar Khel Nisatta District Charsadda.

Petitioner (s)

Versus

The State etc

Respondents

For Petitioner :-	<u>M/S Farmanullah Sailab and Shabbir</u> <u>Hussain Gigyani, Advocates.</u>
State :-	<u>Mr. Muhammad Sohail, AAG.</u>
For Respondent :-	<u>Syed Abdul Fayaz, Advocate.</u>
Date of hearing:	<u>06.03.2018</u>

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioner Bhai Jan, seeks post arrest bail in case FIR No.384 dated 21.05.2012, registered under sections 302/496-B/109/34 PPC, in Police Station Nisatta.

2. The prosecution case as set forth in the FIR is that on 21.05.2012 at about 800 hours, Faqir Jan ASI, on receipt of information about the occurrence rushed to the spot and found the dead body of deceased Ijaz lying there. Asfand Yar, complainant present at the spot reported him to the effect that on 20.05.23012, the deceased left his house, but did not return till evening. He was searched, but could not be traced and on 21.05.2012, his dead body was found in the poplar trees standing in the fields of one Sadiqeen. He disclosed that he having no enmity with

anybody; did not charge any one by name and will charge the actual culprit (s) on satisfaction. On 4.06.2012, he recorded his statement under section 164 Cr.P.C., wherein he charged present petitioner and co-accused Mst. Nodia Begum (widow of the deceased), for the occurrence, hence, this case.

3. Having heard the arguments of learned counsel for the parties, it appears from the record that the occurrence is unseen. Though, complainant has directly nominated the petitioner along with co-accused for commission of the offence in his statement under section 164 Cr.P.C., but he has not disclosed the source on the basis of which he got satisfied about complicity of the petitioner in the commission of offence. No doubt, co-accused Mst. Nodia had recorded her confessional statement wherein she while disclosing about her illicit relation with the present petitioner has attributed the role of murder of the deceased to the petitioner on her instigation, but it appears from the record that this Court while deciding her appeal against conviction by not believing her confessional statement has recorded her acquittal vide judgment dated 09.04.2014. Though, under the provisions of Qanun-e-Shahadat Order, 1984, confessional statement of an accused against co-accused is to be considered as a circumstance, but when the confessional statement of co-accused Mst. Nodia has not been believed by this Court and there is no direct and

circumstantial evidence against the petitioner, whether the prosecution would be able to prove the guilt of the petitioner is a debatable question which makes his case arguable for the purpose of bail. The petitioner has not confessed his guilt before the competent Court of law nor any incriminating articles to link him with the commission of offence has been recovered from his direct or indirect possession. Investigation against the petitioner is complete and he is no more required for further interrogation. In this view of the matter on merit, he is entitled to the concession of bail. As regard abscondance of the petitioner, it has been held by the august Apex Court in case titled, “**Qamar alias Mitho Vs The State and others**” (PLD 2012 Supreme Court 222) that right of bail cannot be refused to accused merely on account of his/her abscondance which is a factor relevant only to propriety. Moreover, it has been held by the august apex Court in cases of “**Ibrahim v. Hayat Gul and others**” (1985 SCMR 382) and “**Muhammad Sadiq V Sadiq and others**” (PLD 1985 SC 182) that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to the accused as of right and such right cannot be refused merely on account of abscondance of accused. Same view has been reiterated in case titled, “**Ikram ul Haq Vs Raja Naveed Sabir and others**” (2012 SCMR 1273).

4. For the reason discussed above, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of rupees two lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced:
06.03.2018

Siraj Afridi P.S.

JUDGE

Mr. Justice Rooh-ul-Amin Khan.