

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT

Cr. M No.1564-P of 2017.

JUDGMENT

Date of hearing...03.08.2017.....

Petitioner.....

Respondent.....

ABDUL SHAKOOR KHAN, J:- Saifullah,
petitioner, seeks his release on bail in case
FIR No.136 dated 13.02.2017 under Section
324 PPC at Police Station Charsadda, District
Charsadda.

2. The brief facts of the case are that the complainant Changaiz Khan in injured condition reported to the local police at casualty DHQ Hospital Charsadda to the effect that on 13.02.2017 at 17:30 hours he was present at the place of occurrence, in the meanwhile accused/petitioner armed with deadly weapon came there and started firing

upon him with the intention to kill. As a result of the said firing complainant received injury on his left hand. Motive behind the occurrence is stated to be domestic dispute with the brother of the complainant. Hence petitioner/accused was charged in the aforementioned FIR.

3. The learned counsel for petitioner contended that the accused/petitioner is innocent and falsely charged in the present case. He further contended that there is no direct or circumstantial evidence on the available record to connect the accused/petitioner with the commission of the offence. He further contended that the seat and nature of injury sustained by the petitioner would be punished for the hurt caused, which fall within the contemplation of Section 337-F (v) PPC. Thus, the petitioner is entitled to the concession of bail.

4. As against that the learned State counsel assisted by counsel for complainant

argued that the use of deadly weapon along with the recovery of three empties from the spot of occurrence leave no doubt as to the intention on the part of the petitioner to kill the complainant regardless altogether of the nature and seat of injury, more-so the petitioner remained fugitive from law for four months, as such does not deserve for the concession of bail.

5. I have carefully gone through the record and anxiously considered the arguments of learned counsel for the parties.

6. A look at the discharge summary Plastic Surgery Unit Hayat Abad Medical Complex which is available on judicial file shows that there was a fracture of left thumb, which alleged to be a fire arm injury. While a perusal of other data so far available would reveal that the occurrence was over without the intervention of anybody, meaning thereby complainant was at the mercy of the accused/petitioner. When the alleged

occurrence viewed in this context and background, the question whether the petitioner intended the death of the complainant requires further inquiry and makes the case arguable for the purpose of bail specially when there is no opinion of expert regarding nature of injury i.e. simple or grievous, which is on the non-vital part of the body.

7. Moreover, basic punishment in view of medical report for the offence allegedly committed by the accused/petitioner was either 'arsh or daman' and the sentence of imprisonment was only discretionary and likely to be awarded only if the behaviour of the accused/petitioner was unusual, cruel or indicative of misuse of force, authority or occasion.

8. It has vehemently been argued by the learned counsels appearing for the State and complainant that the petitioner had remained a proclaimed offender for a period of about

four months and, thus, he is not entitled to any concession of bail. This Court, however, not felt persuaded to agree with the learned counsels for State and complainant. It has already been held by the apex Court in the cases of Ibrahim Vs. Hayat Gul and others (1985 SCMR 382) and Muhammad Sadiq Vs. 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 him as of right and such right cannot be refused to him merely on account of his alleged abscondence which is a factor relevant only to propriety. The same view was also followed by the apex Court in the cases of Qamar alias Mitho, (PLD 2012 S.C 222), Ehsanullah (2012 SCMR1137) and Muhammad Shafi (2016 SCMR 1593).

9. For the reasons stated hereinabove, the present bail petition is accepted and the petitioners are admitted to bail subject to furnishing bail bonds in the sum of

Rs.200,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

Announced.
03.08.2017.

J U D G E