

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

Cr.M/BA NO.795-P/2017

JUDGMENT

Date of hearing. 9.6.2017

Petitioner: (Mosam Khan) by Mr. Muhammad Shabbir Khan, Advocate.

Respondents (The State and another) by M/s Talha Saeed & Malik Misraf, Advocates.

WAQAR AHMAD SETH, J.- Accused-petitioner, Mosam

Khan son of Rasheed Khan, seeks bail in case FIR No. 06 dated 8.1.2006 under Section 302/364/34 PPC registered at Police Station Mattani, Peshawar. He has been refused bail by the learned Additional Sessions Judge-XIV, Peshawar vide order dated 12.4.2017; hence, the instant petition for the same purpose.

2. Brief facts of the case are that father of the complainant, namely, Muslim Khan was abducted on 6.11.2005 at 0900 AM by the petitioner along with his co-accused, namely, Hassan Khan son of Rasheed Khan, Yaqoob Khan, Saeed Khan sons of Abdul Hameed, Abdul Hameed son of Gul

Mir from the vicinity of Government High School Sherkeria in the presence of Shah Zaman son of Abdul Hanan & Zahid Hussain son of Abdul Ghani and shifted him to tribal territory. However, on the same day, the abductee was killed. Motive is stated to be blood feud enmity. According to the complainant, the dead body was discovered by the political authorities and was brought to the village whereafter it was taken to the police station for registration of FIR but the local police refused the same; hence, he filed an application under Section 22-A Cr.P.C. before competent court of law, which was allowed on 2.1.2006 and on basis of which, the instant F.I.R. was registered.

3. At the very outset, learned counsel for the complainant raised objection that this Court has got no jurisdiction to entertain the present bail petition because the deceased was done to death in the tribal territory and the accused-petitioner is required to approach the appropriate forum for such a relief. To meet the objection, first, I would like to reproduce Section 403 Cr.P.C., which reads as under:

“403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence

and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence.....”.

Similarly, this Court in the case of Munawar

Khan vs. Political Agent Khyber Agency Station and 4 others

(2012 MLD 503), has held that:

*“Ss. 365/400/401/411—Frontier Crimes Regulation, 1901, Ss. 11 & 48—Criminal Procedure Code (V of 1898), Ss. 180 & 403---Constitution of Pakistan, Arts. 199 & 13---Constitutional petition—Abducting, belonging to gang of dacoits and dishonestly receiving stolen property---Jurisdiction of court---Double jeopardy---Counsel for petitioner/accused had contended that as the case was registered at Police Station at Peshawar, and according to the F.I.R. alleged abductee was abducted from settled area, Assistant Political Agent had no jurisdiction to try and convict accused; that no person would be prosecuted or punished for the same offence more than once and that all judgments under Frontier Crimes Regulation as well as by Judicial Magistrate Peshawar, be set aside and accused acquitted of the charge---Validity--
-Alleged abductee was abducted from the jurisdiction of Police Station at Peshawar; and was recovered from a place situated in Tribal Areas falling within the jurisdiction of Assistant Political Agent---Both Assistant Political Agency and Judicial Magistrate Police Station Peshawar had the jurisdiction to try accused as provided under S. 180, Cr.P.C---Article 13 of the Constitution provided that no person would be prosecuted or punished for the same offence more than once which had also been provided under S. 403, Cr.P.C. – Subsequent trial of accused person by Judicial Magistrate Peshawar and his*

judgment, were violative of Art. 13 of the Constitution and S. 403, Cr.P.C. and were of no legal consequence”.

In the instant case, co-accused of the petitioner, namely, Saeed Khan & Abdul Hameed were tried by the learned Additional Sessions Judge-VII, Peshawar and they were acquitted vide judgment/order dated 26.2.2010, against which, the complainant filed Cr.A. No. 291/2010 before this Court but the same was also dismissed in limine vide order dated 3.2.2011. Moreover, another co-accused, namely, Muhammad Yaqoob was also allowed bail by the learned Additional Sessions Judge-III, Peshawar vide order dated 4.5.2012 and against the said order, the complainant filed cancellation petition before this Court, which too, was dismissed vide order dated 15.2.2013, so keeping in view the above facts and circumstances of the case and while taking guidance from the judgment reported in 2012 MLD 503 (referred above) along with Section 403 Cr.P.C., this Court has the jurisdiction to entertain the present bail petition; hence, the objection so raised by the learned counsel for the complainant is overruled.

4. Arguments heard and record perused.

5. Without going into deep merits of the prosecution case, suffice it to say, that five (05) persons have been charged by the complainant for the murder of his father Muslim Khan with no specific role, out of them, two were acquitted and one was granted bail by the competent court of law, whose trial is still pending. The case of present accused-petitioner is at par with them and he deserves alike treatment. Besides, the accused-petitioner, after arrest, remained in police custody but no recovery or discovery has been made from him.

6. As far as the abscondance of accused-petitioner is concerned, it has been settled law that mere abscondence is no ground to decline the bail, if the case of an accused is otherwise found fit for bail on merits and the bail cannot be refused even if he had remained an absconder. Reliance can be placed on the cases of **State v. Malik Mukhtiar Ahmed (1991 SCMR 322)** and **Mitho Pitafi versus The State (2009 SCMR 299)**. Accused-petitioner is behind the bars since 31.1.2017. Investigation in the case is complete and the accused-petitioner is no more required for further investigation and keeping him

behind the bars would serve no useful purpose, therefore, this Court is inclined to extend the concession of bail to him.

7. In view of the above, this bail application is accepted and the accused-petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 400,000/- (Rs. Four lacs) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

Announced.
9.6.2017

J U D G E

Nawab Shah