

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(Judicial Department)

Cr.MBA.No.172-B/2017

JUDGMENT

Date of hearing: **31.5.2017**

Petitioner: **Eid Badshah by Haji Maalik
Rahman Khattak Advocate.**

Respondent: **State by Mr. Qudratullah
Khan Gandapur, Asstt: A.G.
and complainant by Malik
Akhtar Nawaz Advocate.**

ABDUL SHAKOOR, J.- Having failed to get the concession of bail from the Court of learned Sessions Judge, Karak vide order dated 02.5.2017, accused/petitioner Eid Badshah involved in case F.I.R No.270 dated 14.4.2016 registered under Sections 324/337-D PPC at Police Station Karak, District Karak, has filed the instant petition for the same relief.

2. Brief facts of the case, as narrated in the FIR, are that on 14.4.2016 at 0705 hours, injured Aqib Nawaz was brought to Emergency Room of K.D.A. Hospital, Karak who was not in proper senses and his

uncle Zar Janan reported to the local police that they have landed property known as *Walishkai* situated near the house of accused/petitioner wherein wheat crop was cultivated. On the eventful day, he alongwith injured Aqib Nawaz and his sister in law Mst. Rahman Zadi went to the land for supervision and in the meanwhile accused/petitioner duly armed with Kalashnikov came and fired at his nephew Aqib Nawaz in order to kill him, as a result, he got hit and sustained injuries. On the report of complainant murasila was drafted and sent to the Police Station on the basis of which instant FIR got registered.

3. Learned counsel for accused/petitioner argued that there is no independent witness of the occurrence and the accused/petitioner has been charged with malafide intention after due consultations and deliberations. He submitted that the FSL report regarding recovery of empties and the MLC report of the victim do not support the prosecution version. He further contended that nothing has been recovered

from direct possession of the accused/petitioner and case against him is one of further inquiry, therefore, he is entitled for the concession of bail.

4. Conversely, learned Asstt: A.G. assisted by private counsel for the complainant opposed the bail petition by arguing that the accused/petitioner is directly charged in the FIR for causing injuries to the victim on vital part of his body. They contended that the occurrence took place at day time, therefore, question of mistaken identity cannot arise. They further contended that the accused/petitioner was arrested by the local police after about one year of the occurrence and during this period he remained fugitive from law. They concluded that prima facie the accused/petitioner is connected with the commission of the offence, therefore, he is not entitled to the concession of bail.

5. I have carefully gone through the record and considered the arguments of learned counsel for the parties as well as learned Asstt: A.G for the State.

6. It appears from the record that the petitioner is singularly and directly charged in the FIR for making effective firing at complainant party due to which Aqib Nawaz, the nephew of complainant sustained injuries. During the course of investigation, the investigating officer recovered nine (09) empties of 7.62 bore from the place of occurrence which were sent to the FSL and according to Fire Arms Expert report these empties were fired from different 7.62 bore weapons which certainly raises a question as to whether the unfortunate act is the doing of one person or more. This factor alone takes the matter to one of further probe. The MLC report of the victim suggests that he sustained wound on the back side of chest and in this way the MLC report also does not support the case of prosecution.

7. So far as abscondence of petitioner is concerned, mere absconsion is not a conclusive proof of guilt of accused person. It is only a suspicious circumstance against an accused that he was found

guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof. The value of abscondence, therefore, depends on the facts of each case. The absconsion of the accused may be consistent with the guilt or innocence of the accused, which is to be decided keeping in view over all facts of the case. Mere abscondence of accused could not be made the basis for his conviction as accused could run away due to fear or suspicious circumstances. No doubt, abscondence is a relevant fact, but it can be used as a corroborative piece of evidence, which cannot be read in isolation but has to be read alongwith substantive piece of evidence. Reliance is placed on case titled **“Rohtas Khan Vs. The State” (2010 SCMR 566), Rahimullah Jan Vs. Kashif and another” (PLD 2008 Supreme Court 298.”**

8. The petitioner despite remaining in police custody has made no confession before the competent Court nor any weapon of offence has been recovered

from his possession or at his instance and pointation. He is behind the bar since his arrest and no more required to the local police for further investigation, therefore, keeping him behind the bar would serve no useful purpose.

9. In view of what has been observed above, this petition is allowed and the petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.2,00,000/- (Rupees two lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

10. Above are detailed reasons of my short order of even date.

Announced.
Dt:31.5.2017.

JUDGE