

JUDGMENT SHEETIN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENTCr.M BA No. 1563-P of 2017.JUDGMENT

Date of hearing 11.08.2017.

Khalid.....Vs.....The State etc.

Petitioner (s) by .....

Respondent (s) by.....

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**ISHTIAQ IBRAHIM, J:** - Accused-petitioner

Khalid son of Fateh Muhammad, involved in case vide FIR No. 298 dated 27.04.2017 under section 302/324/34 PPC registered at police station Agha Mirjani Shah (Yakatoot) Peshawar, has knocked the door of this Court for his release on bail which was refused to him by learned Additional Sessions Judge-III Peshawar vide order dated 18.07.2017.

2. FIR reveals that local police after receiving information regarding the occurrence rushed to LRH casualty where injured / complainant namely Tariq reported the matter to them to the effect that pistol of accused-petitioner was stolen for which brother of

complainant Tahir was nominated and it was settled that the amount of pistol would be paid to accused-petitioner.

On the day of occurrence complainant, alongwith deceased Tahir and Sharif Khan were coming to their home and when reached to the place of occurrence accused-petitioner alongwith absconding co-accused Arif were present there and on seeing the complainant party started altercation with them and thereafter made firing at them from their respective weapons, resultantly from the fire short of accused-petitioner complainant and deceased Tahir were hit and from the fire short of co-accused Arif, Sharif was hit and died, hence the present FIR.

3. I have gone through the record with the valuable assistance of learned counsel for the parities, as well as that State counsel.

4. Deep appreciation at bail stage is neither permissible nor advisable, though learned counsel representing accused-petitioner stressed hard on merits of the case by producing various judgments of apex Court as well as of this jurisdiction, but discussing merits of the case at this stage, would prejudice the case of either side. Record suggests that accused-petitioner has directly been

nominated in the FIR by the complainant for the murder of deceased Tahir, Sharif Khan and injuries upon his person with a motive which has not been denied/negated. Besides this, the medico legal report i.e Postmortem reports of both the deceased fully supports the version of prosecution /complainant coupled with the site plan and the recoveries in the shape of empty shells, blood stained etc, which on the face of record substantiates the charge against the accused-petitioner. Sufficient material is available on file which could prima facie connects the accused-petitioner with the commission of offence and exclude the plea of further inquiry. The grant of bail as of right under section 497(2) Cr.PC is possible only when a finding is rendered that there are not reasonable grounds for believing that the accused has committed the particular offence. When there is hesitation to record such a findings, one explanation might be that it is not possible. It is true that the higher court might discover the material is sustain such a finding being recorded. Nevertheless, it would be more advisable, in order to show that the mind is applied to this aspect, to at least mention it. Without such a finding the remark that it is a

case of further inquiry is least helpful. Who can deny that further inquiry is also possible rather necessary in all those case, where bail is refused because of the prohibition contained in section 497 (1) Cr.PC. The relevant context of further inquiry in section 497 (2) Cr.PC is the existence of reasonable grounds that the accused has not committed the offence. When a Court is not conscious is convinced of this aspect, mere further inquiry is of absolutely no avail to the accused for bail under section 497 (2).

5. Question of Ballistic Expert qua empty shells that these were fired from one weapon is concerned, in this respect it is stated that in the presence of direct evidence much weight could not be attached to opinion of Ballistic Expert, because it is well settled that expert evidence, may be medical or that of a Ballistic Expert is entirely corroborative in nature and shall not have bearing on direct or other circumstantial evidence, as in the instant case, which is definite, forthright and at the same time creditworthy. Confirmatory evidence is not of much significance. It cannot, at any rate, outweigh the direct evidence unless it is for any reasons deficient in

quality. **Guidance is derived from 1991 SCMR-60, titled Ghulam Mehdi versus the State.** The offence, with which the accused-petitioner is charged, squarely falls within the prohibitory clause of section 497 Cr.PC, thus disentitling the petitioner to the grant of bail.

6. For the reasons recorded hereinabove this bail petition being bereft of legal substance is hereby dismissed.

7. Needless to mention here that the assessment made hereinabove are tentative in nature and shall not prejudice the case of either side during trial.

Announced:  
11.08.2017.

**J U D G E**