

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

**Cr.Misc.BA No.4002-P/2021**

Gul Ghajan son of Rozi Khan,  
r/o Maro Khel Alizai, Lower Kurram,  
District Kurram.

Petitioner (s)

**VERSUS**

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Barrister Rokhan Nafees Shafi and Mr. Shahid Qayyum Khattak, Advocate.</u>
For State :-	<u>Mr. Muhammad Nisar AAG.</u>
For complainant:-	<u>Mr. Aamad Azam, Advocate.</u>
Date of hearing:	<u>10.01.2022</u>

**ORDER**

**ROOH-UL-AMIN KHAN, J:-**Through this common order, I propose to decide the instant bail application, filed by Gul Ghajan, the accused/petitioner, and connected **Cr.Misc.BCAs No.3059-P and 3060-P of 2021**, filed by Inam Ullah son of complainant Gul Faraz, the petitioner, as all pertain to one and the same FIR No.122 dated 18.06.2021, registered under sections 302/427/34 PPC and section 15 KP Arms Act, 2013, at Police Station Lower Kurram.

2. Through the instant application, Gul Ghajan accused/petitioner, seeks his release on bail in the cited FIR, whereas, through the connected Cr.Misc.BCAs No.3059-P and 3060-P of 2021, Inam Ullah petitioner, seeks cancellation of post arrest bail granted to accused/respondents, namely, Daud Jan and

Agha Jan by learned Additional Sessions Judge, Sadda Kurram vide order dated 17.07.2021.

3. According to FIR on receipt of information regarding shifting of dead body of a taxi driver to THQ hospital Sadda, on 18.06.2021 Muhammad Rashid SHO along with other police officials reached the said hospital where he learnt that the dead body is that of Ikram Ullah deceased, a taxi driver, who on the fateful day was proceeding to Tall in his taxi bearing Registration No.B.1878 and at about 0030 hours when reached the spot some unknown culprits seriously injured him who succumbed to injuries on the way to hospital when he was being shifted by the officials of Rescue-1122. The SHO drafted Murasila on the basis of which FIR was registered against unknown culprit(s). On 09.10.2021, one Nasir ud Din, posing himself as an eyewitness of the occurrence recorded statement under section 164 Cr.P.C., wherein he charged the accused/petitioner along with accused/respondents Agha Jan and Daud Jan as well as an unknown accused. On the next day i.e. 11.10.2021 Gul Faraz Khan, father of the deceased also got recorded statement under section 164 Cr.P.C., wherein he too, charged the accused/petitioner along with accused/respondents for murder of the deceased, hence, this case.

4. Arguments of learned counsel for the parties heard and record perused with their able assistance.

5. The main thrust of the arguments of learned counsel for the petitioner in connected bail cancellation applications was that

accused/respondents have been granted bail by the learned lower court without providing an opportunity of hearing to the State and the complainant which is against the principle of natural justice that no one should be condemned unheard.

6. After going through the impugned bail granting order, the argument of learned counsel for the petitioner has got weight as no one was present on behalf of the State and complainant when the impugned bail granting order was passed, however, record depicts that trial is already in progress, therefore, on this score if the matter is remanded to the learned lower court for decision afresh after providing opportunity of hearing to the State and the complainant, it will increase further agonies of the parties. In this view of the matter, instead of adopting the exercise of remand, this court after providing opportunity of hearing to learned counsel for the complainant and learned AAG for the State, is going to decide the bail cancellation application on merits.

7. It appears from record that the occurrence has taken place on 18.06.2021 which was initially reported by Muhammad Rashid SHO vide Murasila on the basis of which FIR was registered against unknown culprit(s). One Nasir ud Din, posing himself as an eyewitness of the occurrence has got recorded statement under section 164 Cr.P.C. on 09.10.2021 i.e. after a about three months and 21 days of the occurrence and for the said delay he has not furnished any plausible explanation, therefore, evidentiary value of his belated statement is yet to be determined during trial. Even otherwise, his statement is in contradiction with

the medical evidence. According to statement of PW Nasir ud Din, on the fateful night, when he was returning home at about 10/11.00 p.m. he noticed a motorcar parked on road side near Faqir Khomasa. In the head lights of the car he identified the accused/petitioner and accused/respondents along with an unknown accused beating a young man. When he reached them near, the accused shouted and threatened him not to come close. After sometime, he also heard report of firing and at morning he learnt that one taxi driver has been killed by the said four persons. His statement depicts that he has not given specific role of firing to any of the four accused. Postmortem report of the deceased reveals that there was penetration wound measuring 1.5x 1.5 cm at epigastria region on the person of the deceased along with scalp laceration wound. The doctor has not explained the said injuries to be the result of firearm, sharp weapon or otherwise. No marks of violence have been noticed on the body of the deceased. On tentative assessment, medical evidence is not supporting the statement of alleged eyewitness. So far as statement of Gul Faraz, father of the deceased is concerned, the same has been recorded after statement of alleged eyewitness Nasir ur Din. He has categorically stated that in light of statement of Nasir ud Din he was satisfied about involvement of the accused in the murder of his deceased son. Record depicts that on the pointation of accused Daud Jan a Kalashnikov has been shown recovered, which along with one 7.62 bore crime empty taken from the spot, has been sent to the FSL and FSL report in this regard is in

positive, however, authenticity of this piece of evidence is also to be adjudged by the learned trial court as, at the moment, kind of the injuries of the deceased are uncertain. Similar is the case of the crime dagger/knife allegedly recovered on the pointation of the accused/petitioner Gul Ghajan because as stated earlier postmortem report is silent about the kind of injuries sustained by the deceased. On tentative assessment of the material on record participation of the accused in the commission of offence requires further probe, hence, they are entitled to the concession of bail. As regards section 15 KP Arms Act, 2013, punishment of the same does not fall within the Prohibitory Clause of Section 497 Cr.P.C. and in such like cases grant of bail is a rule and refusal thereof an exception. On the face of record, there exists no exceptional circumstance to clog the way of grant of bail to the accused. The learned lower court rightly granted bail to accused/respondents to which no exception can be taken. There is no allegation of misuse of concession of bail against accused/respondents. Record shows that trial is in progress and accused/respondents are regulating appearing before the learned trial Court.

8. For what has been discussed above, **Cr.Misc.BCA No.3059-P and 3060-P of 2021**, filed by petitioner Inam Ullah, are hereby dismissed, whereas, the instant bail application filed by accused/petitioner Gul Ghajan is accepted. He is allowed bail. He shall be released on bail if 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 the learned  
trial Court.

**Announced:**

*10.01.2022*

*M.Siraj Afridi PS*

*Senior Puisne Judge*

**SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge**