

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT**

Cr. M BA No.1840-P of 2018.

JUDGMENT.

Date of hearing 8th October, 2018.

Muhammad Ali alias Ali.....Vs.....The State etc.

Petitioner(s) by Mr. Farhanullah Shahbanzai, advocate.

State/Respondent(s) by Mr. Bakhtiar Muhammad, advocate & Rab Nawaz
Khan, Additional Advocate General.

WAQAR AHMAD SETH, CJ: - Accused-petitioner,

Muhammad Ali alias Ali son of Nabi Gul, charged in case
vide FIR No. 579 dated 04.07.2018, under section
302/114/34 PPC, registered in Police Station Sarband,
Peshawar, has approached this Court for his release on bail,
which was refused to him by learned Additional Sessions
Judge-V, Peshawar, vide order dated 03.09.2018.

2. As per contents of FIR, the case of prosecution
is that, complainant Abdur Raziq, present in HMC, while
reporting the matter to police has stated that he was present
with his deceased mother, when his maternal uncle Wazir
Gul alongwith accused-petitioner and co-accused Sher Ali

son of Nabi Gul and Nabi Gul son of Gul Raheem came in order to settle the matter, and during talks, accused exchange hot words with his deceased mother, and upon the instigation of accused-petitioner and his father i.e. co-accused Nabi Gul, accused Sher Ali opened indiscriminate firing upon his mother with the intention to kill her, due to which she got hit and on way to hospital, succumbed to the injuries, hence the instant FIR.

3. I have heard learned counsel for the parties, learned AAG for the State and available record gone through.

4. Be that as it may, record suggests that accused-petitioner alongwith co-accused Sher Ali & Nabi Gul have been charged by the complainant Abdur Raziq, who happens to be the brother in law of accused-petitioner and co-accused Sher Ali for the murder of his mother, reportedly killed during Jirga talks, duly witnessed by Mst. Saira & Lubna, who on 11.7.2018, while recording their statement under section 164 Cr.PC have reiterated the contents of FIR.

Present accused-petitioner though directly been charged in

the FIR, but has been given the role of 'Lalkara' on which his brother co-accused attacked the mother of complainant with his respective weapon of offence, which was recovered from the possession of co-accused Sher Ali and vide Forensic Science Laboratory, report dated 2.8.2018, the recovered empty shell match with the pistol, so recovered and nothing qua active role or any weapon, has stated to be in his possession during the alleged occurrence, therefore, the role of Lalkara and its effect, so attributed to the present accused-petitioner would determined during trial, after recording of evidence, as co-accused also attributed the said role has died on 23.7.2018 in Jail Hospital. Accused-petitioner in the case, is simply blamed for raising 'Lalkara' for killing the deceased, and in that connection, he had not been ascribed with any role of fire upon the deceased. FIR had not revealed that accused was armed with any weapon at relevant time. Reliance is placed on 2014 YLR-200. Furthermore, no overt act in the commission of offence, except for raising "Lalkara" and no doubt, the proclamation of "Lalkara" was not mere proverbial but commanding one

and for which the petitioner could be held liable for abetment, and its punishment would not fall within the prohibitory clause of Section 497(1) Cr.P.C. After, arrest, accused-petitioner has been investigated / interrogated but nothing beneficial or recovery / discovery has been brought on record and nor he has confessed the guilt. Investigation in the case is complete and he is no more required to the prosecution for investigation etc, and keeping him behind the bars for indefinite would serve no useful purpose, that too; falling within the ambit of subection-2 of section 497 Cr.PC. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on the case of Zaigham Ashraf versus the State and others, reported in 2016 SCMR-18.

5. From the tentative assessment of record petitioner has made out a case arguable for the purpose of bail, resultantly the same is allowed and accused-petitioner be released on bail, provided he furnishes bail bonds to the

tune of Rs. 2, 00,000/- with two sureties each in the like amount to the satisfaction of Illaqa / Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

7. These are the reasons of my short order of even date.

Announced:
08.10.2018.



Chief Justice