

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

Cr.Misc.BA No.1434-P/2017
With Cr.Misc. No.71-P/2017

Date of hearing:- 15.09.2017.

Petitioner(s):- Bakhtiar Khan by Mr. Khurshid Ahmad Shahan,
Advocate.

Respondent (s):-The State by Syed Qaisar Ali Shah, AAG and
complainant by Mr. Said Nazir, Advocate.

ORDER

ROOH-UL-AMIN KHAN, J:- Through Cr.Misc. No.71-P/2017, petitioner seeks permission of the Court to bring on file the additional documents annexed with the application as the same are necessary for the just decision of the case. The application is supported by an affidavit and the other side, has no objection, therefore, the same is allowed, resultantly, the documents annexed with the application shall be considered as part of Cr.Misc.BA No.1434-P/2017.

2. Petitioner Bakhtiar Khan, seeks bail in case FIR No.337 dated 16.05.2010, registered under sections 302/324/34 PPC, in Police Station MRS, Kohat, where he along with co-accused Qaisar is charged for committing the murder of Jehanzeb Khan deceased, the brother of complainant Jamshed Khan.

3. According to report of complainant Jamshed Khan on the fateful day he along with his deceased brother were

in Togh Bazaar in connection with purchase of house hold articles and when reached the Chowk near High School Togh, petitioner Bakhtiar Khan alongwith co-accused Qaisar Khan, duly armed with pistols, emerged and opened fire at them with the intention to commit their murder, resultantly, the deceased got hit and died on the spot, while he, the complainant, luckily remained unscathed. A dispute over property has been alleged as motive behind the crime, hence, this case.

4. Having heard the arguments of learned counsel for the parties, it appears from the record that petitioner is directly charged for commission of the crime with specific role of firing at the deceased and complainant. The occurrence has been reported with promptitude i.e. 30 minutes of the occurrence, which eliminates the possibility of consultation and deliberation in charging the accused. Being a broad daylight occurrence and parties well known to each other, question of mistaken identity does not arise. Six empties of 30 bore pistol have been recovered from the crime spot and as per autopsy report the deceased has sustained four firearm injuries which resulted his unnatural death. The injuries on the person of the deceased do commensurate with the number of the accused. Recovery of blood of the deceased from the spot, his last worn attires coupled with postmortem report and noticeable abscondence of the petitioner, corroborate the version of

the complainant. The above discussed circumstances, prima facie show complicity of the petitioner with the commission of offence, punishment of which falls within the Prohibitory Clause of Section 497 Cr.P.C., hence, he is not entitled to the concession of bail.

5. The argument of learned counsel that since co-accused Qaisar Khan, having identical role as assigned to the petitioner, has been released on bail by the learned Trial Court, therefore, on the principle of consistency, the petitioner also deserves the same treatment, is misconceived because co-accused had been refused bail upto this Court. It so happened during trial, when the complainant failed to appear for recording evidence despite hectic efforts of the Trial Court, co-accused was ultimately, granted bail and the trial was adjourned sine die. Though, the role of co-accused is similar with the petitioner, but he has not been granted bail on merits, therefore, the rule of consistency cannot be pressed into service in favour of the petitioner.

6. For the reasons discussed above, this petition being meritless is hereby dismissed.

7. Before parting with the judgment, I, deem it appropriate to refer to the direction of the learned Trial Court vide order dated 30.05.2011 whereby releasing co-accused on bail, the trial/case has been adjourned sine die due to non-appearance of the complainant for evidence.

The direction qua sine die adjournment is squarely against the spirit of section 344 Cr.P.C. It is to be noted that the Code of Criminal Procedure, 1898, does not provide any provision for sine die adjournment, rather by invoking the provision of section 344 Cr.P.C. the Trial Court may postpone or adjournment proceedings, if, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable by order in writing stating the reasons therefor from time to time on such terms as it thinks fit, for such time as it considers reasonable and may by warrant remand the accused if in custody. The words **“from time to time”** and **“for such time as it considers reasonable”** are of much significance which provide that such adjournment in the above circumstances will be from time to time and for some specific time as the Court thinks fit. Thus, the direction of the learned Trial Court qua sine die adjournment is hereby quashed. The learned Trial Court shall restore the trial and proceed with the same in accordance with law.

Announced:
15.09.2017

Siraj Afridi P.S.

JUDGE

