

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

Cr.Misc.B.A. No.2025-P/2017.

Muhammad Ali Shan Akhtar alias Ali
Petitioner.

Versus

The State etc .

Respondents

For Petitioner :- Mr. Muhammad Sajid Khan Advocate.

State :- Mati Ullah Baloch, Adv.

Respondent No.2:- Mr. Aqal Muhammad, Advocate.

Date of hearing: 27.09.2017.

ORDER

ROOH-UL-AMIN KHAN, J:- Muhammad Ali Shan Akhtar alias Ali, seeks bail in case FIR # 287 dated 18.08.2017, registered under sections 324/34 PPC, in Police Station Yar Hussain, District Swabi.

2. As per contents of First Information Report (FIR), allegations against the petitioner are that on 18.08.2017 at 11.10 hours, he along with co-accused Faizan, Ali and Kifayat Ullah, intercepted the complainant at Yar Hussain road, ordered him to sign a 'Talaq Nama' and on his refusal, thrashed him with fits and kicks, followed by firing of the petitioner with which the complainant got hit and sustained injury on his left arm. Elopement of Mst. Nayab the fiancé of complainant, with the brother of accused,

namely, Zeeshan, has been advanced as motive behind the incident, hence, this case.

3. Having heard the arguments of learned counsel for the parties, it appears from the record that no doubt the role of effective fire shot on the person of the injured complainant, has been specifically assigned to the petitioner coupled with the fact that the incident is of a broad day-light and reported with promptitude at 10.30 hours, but the non-recovery of blood, any crime empty from the spot, the medical examination of the injured complainant at 10.30 hours i.e. 10 minutes prior to the registration of the FIR, and blackening/charring marks observed by the medical Officer on his wound as well as keeping in mind the motive advanced by complainant, are the disturbing circumstances giving rise to a doubt in a prudent mind about the mode and manner of the occurrence as alleged by the complainant. Even otherwise, as per contents of FIR, the petitioner has not been shown to have repeated the act of firing despite the fact that by then the complainant was at his sole mercy, hence, applicability of section 324 PPC and intention to kill, is debatable question which makes the case of the petitioner arguable for the purpose of bail. Keeping in view the nature of injury on the person of complainant, at the most section 337-F (iii) PPC is to be attracted to the case of petitioner, punishment of which is Daman and the court may also

award the punishment of imprisonment of either description for a term which may extend to three years as Ta'zir, whereas under sub-section 2 of section 337-N PPC, the Court may having regard to the kind of hurt caused, in addition to payment of Daman, award punishment of imprisonment as tazir to the offender who is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed in the name or on the pretext of the honour. Thus, the primary punishment of the offence under section 337-F (iii) PPC is Daman whereas the punishment of imprisonment as Ta'zir is subject to the conditions/grounds enunciated under section 337-N (2) PPC, which are yet to be determined during trial after recording evidence.

4. For the reasons discussed above, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of rupees two lac with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD, concerned.

Announced:

27.09.2017

Siraj Afridi P.S.

JUDGE

