

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr.MB. No.17-B/2021.

Nauman Khan
Vs.
The State etc.

JUDGMENT

For Petitioner: **Mr. Noor Zada Khan Ahmadzai,**
Advocate.

For State: **Mr. Qudratullah Khan**
Gandapur, Asstt: A.G.

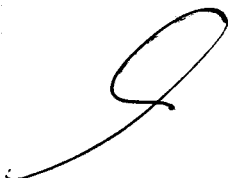
For Respondent: **Mr. Asghar Nawaz Khan, Advocate.**

Date of hearing: **04.02.2021.**

SAHIBZADA ASADULLAH, J.- Charged in case FIR No.1507 dated 19.11.2020, registered under Section 324 P.P.C, read with Section 15 of the Arms Act, registered at police station Bannu City, the petitioner Nauman Khan applied for post arrest bail before the Court of learned Senior Civil Judge (Admn)/MTMC which was declined vide order dated 04.12.2020, feeling aggrieved the petitioner approached the Court of learned Additional Sessions Judge-IV/Judge MCTC, Bannu, which was declined vide order dated 16.12.2020. Feeling aggrieved the petitioner approached this court through the instant bail petition.

2. Brief facts of the case as divulged from the FIR, registered on the basis of murasila, are that on

19.11.2020 at 08:05 hours, complainant Shahzeb reported he matter to one Shah Qiaz Khan ASI in the Civil Hospital, Bannu, to the effect that his father is running a barber shop at Tanchi Bazaar Bannu city; that Nauman son of Muhammad Khan (petitioner) had parked his rickshaw in front of the shop, who was asked by his father to remove the same, upon which accused Nauman got annoyed, took out his pistol and fired at his father (Fida Hussain), who received firearm injury. After the occurrence, the accused decamped from the spot, hence, the instant F.I.R.



3. The learned counsel for petitioner vehemently argued that there is no denial to the fact that the complainant received firearm injuries, but this fact is also established on record that the petitioner also sustained injuries on his person with sharp edged weapon in the same incident and that it is yet to be determined by the trial Court as to who was the aggressor and who was aggressed upon and that this factor alone makes the case of the petitioner one of further inquiry.

4. Contrarily, learned counsel for the respondent submitted that presence of the petitioner in front of the shop of the respondent duly armed with a pistol by itself is sufficient to establish his intention and leaves no ambiguity that it was the petitioner who aggressed upon the respondent and that, that factor alone

is sufficient to discredit the petitioner from the requested concession.

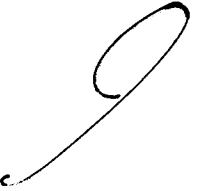
5. Heard. Record perused.

6. In order to understand the issue in hand in its true spirit, it is essential to go through the site-plan and the collected material on record. It is evident from the record that the incident in issue occurred in front of the shop of the respondent which lies across the road where the petitioner being a Rickshaw driver was waiting for passengers. It was the respondent who wanted the petitioner to vacate the occupied place which resulted into altercation. The record transpires that the respondent along with his sons is running a Barber shop and on hearing altercation between the two i.e. the petitioner and their father Fida Hussain, they also joined hands with their father and entered into a scuffle. The respondent received a firearm injury on his body whereas the petitioner too sustained incised wounds at the hands of the respondents, who was examined by the doctor and prepared his medico-legal report stating therein that the wounds were caused by sharp edged weapons. Both the sides reported the matter to the local police in the hospital where on the strength of the report of respondent the F.I.R. ibid was registered, whereas the version of the petitioner was penned down in the shape of Naqal Mad No.17 dated 19.11.2020, charging the respondent along with his sons for commission of the

offence. The report of the petitioner could not be incorporated into F.I.R in light of the judgment reported as "Sughran Bibi Vs the State (PLD 2018 SC 595). The record left no ambiguity that the place of incident is located in front of the shop of the respondents across the road and this is also established on record that the petitioner being a Rickshaw driver was occupying the place waiting for passengers. The moot question for this Court is to determine as to who was the aggressor and who was aggressed upon, which at this juncture is not possible rather the same can better be determined after recording pro and contra evidence. At present this Court is to assess tentatively the available record without touching merits of the case. There is no denial to the fact that both the sides received injuries; and that the place of incident, the time of incident and the persons involved in the episode are one and the same with a dispute over parking of a rickshaw, but with their different versions. This fact is alone sufficient to make the case of the petitioner as one of further inquiry. Reliance is placed on case titled "Shoaib Mehmood Butt Vs Iftikhar-ul-Haq and 3 others (1996 SCMR 1845), wherein it is held that:

16. In case of counter-versions arising from the same incident, one given by complainant in F.I.R. and the other given by the opposite-party case-law is almost

settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard.



7. There is no cavil to the proposition that the Courts of law while seized of bail matters are to tentatively assess the material brought before it and deeper appreciation is not warranted, but equally true that bail applications cannot be heard and decided in a vacuum, rather the courts seized of bail matters should apply its judicial mind to the material available on file, so to avoid miscarriage of justice, as is held in case titled *“Zaigham Ashraf Vs the State and others”* (2016 SCMR 18).

“9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice

because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground.”

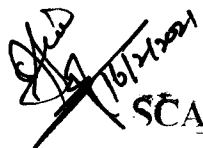
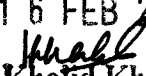
8. While analyzing the record tentatively this Court reaches nowhere but to hold that the petitioner has been succeeded in making out a case for bail as one of further inquiry, resultantly, this petition is allowed and accused/ petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs:2,00,000/- (rupees two lac) with two sureties, each in the like amount, to the satisfaction of learned trial Court/MOD concerned, be released forthwith if not required to be detained in connection of any other criminal case.

9. Above are detailed reasons of my short order of even date.

Announced.
Dt: 04.02.2021.
Azam/P.S


JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah


SCANNED
16 FEB 2021

Khalid Khan