

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

**Cr.M.BA. No.532-B of 2020**

Sher Wali  
Vs.  
The State another.

**JUDGEMENT**

Date of hearing: 26.11.2020.  
For petitioner: Pir Liaqat Ali Shah advocate.  
For respondent(s): Mr. Farooq Khan Sokarri advocate.  
For State: Mr. Qudratullah Khan Gandapur Asstt: A.G .

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**SAHIBZADA ASADULLAH, J.-** This order shall dispose of two petitions for post arrest bail bearing Cr.M.BA. No.528-B of 2020 and Cr.M.BA. No.532 of 2020, as both have arisen from one and the same FIR No.523 dated 17.11.2016, Under Sections 302/324/337-A(i)/337-F(i)(ii)/148/149 PPC, Police Station Domel, District Bannu. Having failed to secure bail from the Court of learned Additional Sessions Judge-III, Bannu, order dated 26.09.2020, the petitioners have approached this Court for their release on post-arrest bail.

2. The prosecution story disclosed in the first information report (F.I.R), in brief, is that on 17.11.2016 at about 08:10 hours, complainant Rasmal Khan, in injured condition, while present with injured Zubair, Khurshid, Sikandar, and Faheemullah, made report at Khalifa Gulnawaz Teaching Hospital, Bannu, to Niaz Muhammad Khan A.S.H.O, to the effect that on the eventful day, he alongwith

above-named, injured was present in his bargain situated near Mohajir Camp, when at about 09:00 hours, petitioner Sher Andaz Khan, armed with pistol, and petitioner Sher Wali, armed with 12 bore double barrel rifle, alongwith acquitted co-accused Muhammad Tahir, armed with pistol, Sadiqur Rehman, Ihsanullah alias Mujram Khan, Muhammad Nawaz and co-accused Gul Wali, Khushdil, all armed with Kalashnikovs, arrived at the spot and launched assault on them, with the butts of weapons, as a result whereof, Sikandar and Faheemullah received injuries, on resistance of the complainant party, petitioners and acquitted co-accused Tahir Khan resorted to firing, resultantly, from the firing of the petitioner Sher Andaz Khan, complainant Ramsal Khan got hit, whereas from the firing of accused acquitted co-accused Muhammad Tahir Khan, Khurshid got hit, while from the firing of Sher Wali petitioner, Zubair Khan sustained injuries. After commission of the offence, the accused fled away from the spot. The complainant alongwith other injured were taken to the hospital for treatment where he lodged the report, which was further verified by Zubair Khan (injured) and Khurshid Khan by affixing their signature and thumb impression as riders of the report. Murasila was transmitted to the Police Station where a case vide the captioned FIR was registered against the accused. Subsequently, on 19.11.2016, injured Khurshid Khan succumbed to his injuries. Motive for the offence was stated to be a dispute over landed property.

3. The learned counsel for the parties, alongwith Asstt: Advocate General where heard at length and with their valuable assistance the record was gone through.

4. True, that in the incident, the complainant alongwith another got injured whereas one Khurshid Khan lost his life, but equally true that as many as eight accused were charged for the occurrence where three out of them i.e. Muhammad Tahir, Sher Andaz and Sher Wali were attributed effective role, whereas accused Sher Andaz Khan was given the role of firing at injured/complainant Ramsal, similarly, the role of firing at injured Zubair was attributed to petitioner Sher Wali, whereas to the acquitted co-accused Muhammad Tahir, at deceased Khurshid Khan, but besides them, five others were also charged with different roles excluding the role of firing. The record tells that after facing trial, the principal accused Muhammad Tahir, who was charged for the murder of deceased Khurshid Khan was acquitted of the charges alongwith other co-accused.

5. The record tells that the petitioner Sher Wali is charged for causing firearm injury on the person of one Zubair, who received the firearm injury on his thigh, whereas petitioner Sher Andaz Khan is charged for causing firearm injury on the person of the complainant Ramsal, which landed on his chest with no repetition of fire shots and it is yet to be seen as to whether the petitioners are vicariously liable for the murder of the deceased, as eight accused are charged for the alleged assault, out of whom, three were charged for effective firing, as the principal accused Muhammad Tahir alongwith others has been acquitted of the charges, so the petitioners cannot be saddled with the vicarious liability, rather their case is to be taken into consideration in respect of the injury caused, as there is no repetition of fire shot and a single injury is received by the injured, so their intention to commit the

murder is yet to be determined by the trial Court after recording pro and contra evidence.

6. This Court cannot lose sight of the fact, that out of eight, five accused have been acquitted of the charges, and the prosecution evidence was disbelieved in totality regarding the presence of the complainant Rasmal on the spot and the mode and manner of the occurrence, so the benefit from acquittal of the co-accused can be extended to the petitioner even at bail stage. This Court is conscious of the fact that the acquittal of co-accused is no ground for release on bail of the subsequently arrested accused, but every case has its own peculiar circumstances. In case in hand, I do not feel hesitation to extend the benefit to the petitioners even at bail stage, as held by Honourable Supreme Court of Pakistan in case titled *Muhammad Faisal Vs. The State and another (2020 SCMR 971)*.

7. It was vehemently argued that the petitioners remained absconders for considerable long time and on this score alone, they are disentitled to the concession of bail, but I do not see myself in agreement with what the learned counsel submitted, as the abscondence alone is not sufficient to disentitle an accused to the concession of bail if he otherwise deserves the same on merit. This Court is conscious of the fact that at bail stage, tentative assessment is to be made and that deeper appreciation is not warranted, but bail applications cannot be heard and decided in vacuum rather the Court should consider the available record/material for the purpose. While assessing tentatively, this Court reaches to a conclusion that the petitioners have been succeeded in making out a case for bail as one of further inquiry, Resultantly, both the petitions are allowed and the accused/petitioners

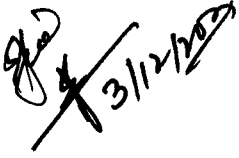
are admitted to bail, subject to furnishing bail bonds amounting to Rs. 200000/-(two lac) with two sureties, each in the like amount to the satisfaction of Illaqa Judicial Magistrate/ MOD concerned.

8. Above are the detailed reasons of my short orders of the even date.


**Announced.**  
Dt: 26.11.2020  
\*Azam/P.S\*

  
**JUDGE**

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



**SCANNED**

03 DEC 2020  
  
**Khalid Khan**