

JUDGMENT SHEET**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)****B.A. No. 227-M/2024****ORDER*****Date of hearing: 03.06.2024******Petitioner:- (Jan Pervez) by Mr. Shabir Ahmad Khan (Dawlat Khel), AHC.******Respondents: - (The State & another) by Mr. Rahim Ullah (Chitrali), Astt: A.G and Muhammad Amin Khan, AHC.***

SHAHID KHAN, J.- The subject order shall dispose of application of the petitioner, Jan Pervez, for his release on bail, in case FIR No. 144 dated 09.04.2024, U/Ss 324/337-F(ii)/34 PPC, R/W Section 15-AA & 19-AA, P.S, Manglawar, District Swat.

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2. Reportedly, the injured/complainant, Awal Khan, reported the subject event to local police at emergency ward of *Manglawar* hospital, whereby, he has charged the accused/petitioner, Jan Pervez, with his accomplice for making murderous attempt at the lives of the complainant-party. Due to firing of the accused/petitioner, Jan Pervez, the complainant got hit on upper portion of his right thigh. Due to firing of the co-accused, Taj

Muhammad alias Muhammad, the other injured i.e. Hayat Khan sustained injuries on different parts of his body, whereas, one Izat Khan, escaped unhurt. Motive for the commission of offence was disclosed to be a dispute over the money.

3. Arguments of the learned counsel for the parties as well as the learned A.S.T. A.G for the State have been heard at a substantial length and the record gone through with their valuable assistance.

4. The record so furnished would transpire that though the accused/petitioner has been charged by the injured/complainant in the FIR for inflicting injury on his person, through his pistol, however, as per medico-legal report of the complainant, the nature of injury on his person was declared as *ghayr-jai-fah-badi'ah* and the punishment provided for such kind of hurt U/S 337 F (ii) PPC is imprisonment of either description for a term which may extend to 03 years as *Tazir*, therefore, the subject offence does not fall within the prohibitory limb of section 497 Cr.P.C. Grant of bail in such like offences is a rule and refusal thereof is an exception. In case Titled "Muhammad Tanveer v/s The State & another" reported as PLD 2017 Supreme Court 733, the Apex Court has held as under;-

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Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts.

Similarly, in case Titled "Tariq Bashir & 05 others v/s The State" reported as PLD 1995 Supreme Court 34, the Apex Court has also affirmed the same rational by observing that;-

That grant of bail in offences punishable with imprisonment for less than ten years is a rule and refusal is an exception, which are missing in the present case.

5. The applicability of section 324 PPC coupled with prosecution's evidence, in particular, the medical evidence of the injured/complainant and the other recoveries allegedly made during the course of investigation, qua the guilt of the accused/petitioner shall be adjudged by the learned trial Court after recording of evidence pro & contra. Likewise, it was held by the Apex Court that whenever even a slight doubt arises with respect to participation of an accused person then it would be appropriate to enlarge such an accused person on bail instead of rod him in the jail. In case titled "Syed Aman Ullah Shah v/s The State & another" reported as PLD 1996 Supreme Court 241, the Apex Court has held as follows;-

So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial.

6. *Challan* in the subject event has already been put in Court and the trial is ripe for its commencement, therefore, the guilt or otherwise of the accused/petitioner shall better be adjudged by the learned trial Court during the course of trial. Even otherwise, bail does not mean acquittal of accused but only change of custody from Government Agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever required to be produced. (Reference can be made to case law 2023 P Cr. LJ 436).

7. Accordingly & leaving aside other merits of the subject event lest it may prejudice the case of either party, the bail petition in hand is allowed and the accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs. 200,000/- (two hundred thousand) with two sureties each in the like amount to the satisfaction of learned trial Court, who shall ensure that the sureties are local, reliable & men of means. The subject observations recorded hereinabove are purely tentative in its nature and shall no way prejudice an

independent mind of the learned trial Court,
prosecution or defence.

Date of announcement
Dt: 03.06.2024


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