

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

BCA No.82-B of 2018

Zafrullah Khan
Vs
Taj Ali & the State.

JUDGMENT

Date of hearing _____ 31.01.2019 _____.

Appellant-Petitioner: **By Mr. Muhammad Ashraf Khan, Advocate.**

Respondent: **By Mr. Faqir Mehboob-ul-Hameed Advocate,**

State by Mr. Qudrat Ullah Khan, AAG.

MUHAMMAD NASIR MAHFOOZ, J.--- Through this petition, petitioner seeks cancellation of pre-arrest bail of respondents, confirmed by learned Additional Sessions Judge-III, Lakki Marwat, on 03.10.2018, in case FIR No.527, dated 09.08.2015, registered under Ss.302/324/34 PPC, at Police Station Lakki Marwat.

2. According to contents of FIR allegedly the accused Murad Ali has been charged for committing Qatl-e-

Amd of Ihasnaullah (brother of complainant), while Haji Mirzali Khan and accused/ respondent Taj Ali Khan have been charged for making firing at the complainant and his brother Faridullah with intent to commit their qatl-e-Amd with their respective weapons, resultantly, his brother Faridullah got injured, while complainant luckily escaped unhurt, hence, they were booked in case FIR ibid.

3. Arguments of learned counsel for the parties heard and record perused.

4. Grant of pre-arrest bail is an extra ordinary remedy and is limited to exceptional and rare cases, that are based on malafide, ulterior motive or where no offence is shown to have been committed on the bare reading of the FIR. Though it is yet to be proved but if any malafide or ulterior motive to falsely involve the accused/ respondent was apparent, he would have earlier surrendered before the court, but he opted not to surrender before the court of law and has been arrested after abscondence of more than three years, without any reasonable explanation, despite the fact that his co-accused are facing trial since long.

5. Plethora of case law could be cited for and against the grant and cancellation of bail, but the conclusion drawn is that logic of words has to be yield to the logic of realities. Pre-arrest bail is to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives. Bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 Cr.PC, in other words he is required to establish the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and there were in fact sufficient grounds warranting further inquiry into his guilt. In the instant case, the accused/ respondent is directly, by name, charged showing his presence at the spot duly armed with repeater and as a result of his firing with co-accused , Fidaullah brother of complainant sustained injuries, while complainant escaped unhurt. Medical report of the injured Fidaullah reveals that he received 1/3" size entry wound on his front thigh, while firearm multiple pellet injuries on the left arm, hence, the size and nature of injuries

support the crime weapon attributed to him. Perusal of site plan and recovery memo reveals that from the place of presence of accused/ respondent the investigation officer recovered three crime empties of 12 bore, which prima facie connect the accused/ respondent with the commission of offence.

6. FIR is lodged with promptitude and specific role is attributed which excludes the possibility of substitution. No doubt that bail cancellation is a harsh order and right of liberty is curtailed but on the contrary equal treatment before law has more significance. A robust interpretation of facts and law requires that justice should not only be done but should be seen to have been done. Apart from that investigation in the instant case is complete and trial has commenced, sufficient evidence has already been recorded, hence, this court could not go deep into merits of the case, lest it may prejudice the case of any party. The learned lower court has travelled beyond its jurisdiction and the parameters set by the superior Courts from time to time for grant or refusal of bail, in case of capital punishment. The impugned

order is not only arbitrary and erroneous but is also in violation of principle of justice, which if allowed to remain in field then each and every case will be of further inquiry and accused would be entitled to pre-arrest bail.

7. For the reasons discussed above, this petition is allowed, impugned order of learned lower Court is recalled and bail of respondent is cancelled. As a consequence whereof, he is taken into custody and be sent to judicial lockup being under trial prisoner. However, the learned trial Court is directed to conclude the trial within shortest possible time, but not later than four months. Parties and their learned counsels are expected to regularly attend the Court.

Announced.
31.01.2019

J U D G E