

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

**Cr.Misc.BA nO.1905-P/2020**

Hidayat Ullah son of Nusrat Khan,  
r/o Karapa Samana District Hangu.

Petitioner (s)

**VERSUS**

The State etc

Respondent (s)

For Petitioner :-	<u>Hafiz Fateh ur Rehman, Advocate.</u>
For State :-	<u>Ms. Shamin Chudhry, Advocate.</u>
Complainant :-	<u>In person.</u>
Date of hearing:	<u>28.07.2020</u>

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** Petitioner Hidayat Ullah, seeks post arrest bail in case FIR No.186 dated 20.03.2005, registered under sections 324/34 PPC, at Police Station Hangu.

2. According to FIR/report of complainant Muhammad Badshah on the fateful day he along with his companions, namely, Farooq, Muhammad Riaz, and Muhammad Ayaz was coming back to their houses, from Malakhi Patti Samana and at 1300 hour, when reached the place of occurrence, accused Hidayat Ullah, Abdul Raziq, Farooq and Muhammad Yousaf, present there, duly armed with Kalashnikovs, opened fire at them, as a result, he got hit, whereas his companions fortunately remained unscathed, hence, this case.

3. Complainant present in person states he does not want to engage a counsel and would rely on the arguments of learned Law Officer for the State. Arguments heard and record perused.

*Handwritten signature/initials*

4. It appears from the FIR that a general role of firing at the complainant party has been attributed to four accused including the petitioner. As per medico legal report, the complainant has sustained two firearm entrance wounds with corresponding exits. The said effective shots on the person of the complainant have not been specifically attributed to the petitioner. None of the companions of the complainant has sustained any injury despite the fact that they were also under the indiscriminate firing of four accused and in close proximity of the complainant, which is a disturbing aspect of the case and pinches a prudent mind. Initially, co-accused Muhammad Youaf and Farooq were arrested and they after facing trial were acquitted by the competent court by disbelieving the prosecution evidence vide judgment dated 03.03.2010. Record is silent about filing of any appeal against the acquittal of co-accused by the prosecution or complainant before the upper forum. The role of the petitioner is similar to that of the acquitted co-accused. In this view of the matter, whether the prosecution would be able to prove the guilt of the petitioner on the same set of evidence which has been disbelieved by the competent Court, is a begging question, which makes the case of the petitioner arguable for the purpose of bail, particularly, in the circumstances when the principle/rule of "**sifting grain from the chaff**" has been done away with by the Hon'ble Supreme Court in its

*V. S. Saini*

authoritative and elaborate judgment, rendered in case of **Hizar Hayat (PLD 2019 SC-527)** by dilating upon the entire law right from 1925 till date. The relevant part of the judgment is reproduced below:-

“We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that **the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit.**” (Emphasis supplied)

5. As on merit, the petitioner has made out a case for the grant of bail, therefore, mere abscondence, as per the settled dictum of the worthy superior Courts, would not be sufficient to clog the way of grant of bail to the petitioner.

6. Accordingly, 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:**

**28.07.2020**

*M. Straj Afridi PS*

**SB of Hon'ble Mr. Justice Rooh ul Amin Khan.**

*Roohul Amin*  
JUDGE