

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT, PESHAWAR**  
 JUDICIAL DEPARTMENT

**Bail Petition No.524-P/2019**

**ORDER**

Date of hearing: : 3<sup>rd</sup> April, 2019

Petitioner( Naseer ) : By: Syed Abdul Fayaz & Mr. Shakil Ahmad, Advocates.

Respondents (State): :By: Mr.Wilayat Khan, AAG.

Complainant: : :By: M/s Jalal ud Din Akbar-e--Azam Khan (Gara) and Muhammad Sareer Khan, advocates.

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**QAISER RASHID KHAN, J:-** Accused/ petitioner

Naseer seeks his release on bail in case FIR No.1091, dated 25-8-2012, under Sections 302/34 PPC of Police Station Charsadda, District Charsadda, with the allegations that he along with his co-accused Basheer had fired at the complainant Abid with which he was injured and later on succumbed to the injuries in the hospital.

2. The learned counsel for the accused/petitioner inter alia contends that the co-accused

namely Basheer, with a similar role of firing, has already been acquitted of the charge, by this court, vide judgment in Cr.A.No. 698-P/2015 decided on 9<sup>th</sup> March, 2017 and that the fate of the trial of the accused/petitioner Naseer would not be different.

3. The learned Additional Advocate General assisted by the learned counsel for the complainant, on their turn, resist the submissions of the learned counsel for the petitioner and contend that the accused/petitioner after the commission of the offence preferred to remain fugitive from law for more than six long years and surfaced only after the acquittal of his co-accused Basheer and hence, being directly charged with a specific role, he is not entitled to the concession of bail.

4. Arguments heard and the available record perused.

5. As per the FIR *ibid*, it was on 25.8.2012 at 8.45 a.m. when Abid (complainant) reported in injured condition as to how on the fateful day, while he was

proceeding to Tehsil Bazar from his house on his motor cycle and when reached the place of occurrence at 8.15 a.m., Basheer (acquitted co-accused) and Naseer (accused/petitioner) having already waylaid at the spot, started firing at him with their respective weapons and caused him firearm injuries. The injured complainant later on succumbed to the injuries in the hospital.

6. The complainant in his dying declaration assigned a similar role of firing at him to both the accused i.e. accused/petitioner and his acquitted co-accused Basheer, with their respective firearms and from the spot, seven empties of 30 bore pistol were recovered which as per report of the Forensic Science Laboratory were fired from one and the same weapon. The acquitted co-accused, namely Basheer, arrested on 26.4.2014, was convicted and sentenced to death by the learned Additional Sessions Judge-V, Charsadda, on 26.11.2015 but the appeal bearing No. 698-P/2015 preferred by the

said co-accused, was allowed by this court, vide judgment dated 9.3.2017 and he was acquitted of the charge.

Thus in a situation where the acquitted co-accused, namely, Basheer, charged with a similar and identical role in the FIR by the complainant/deceased as that of the accused-petitioner and on the same set of evidence, he was acquitted of the charge in appeal, then such acquittal per se takes the case of the accused/petitioner to one of further enquiry, notwithstanding the fact that he remained absconder for a sufficient long time. It needs no reiteration that if an accused is otherwise held entitled to the concession of bail, then abscondence alone shall not come in his way.

7. Accordingly, this petition is allowed and the petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.2,00,000/- (Rupees Two lakh), with two sureties, each in the like amount to the satisfaction of the Illaqa/Judicial Magistrate who shall

ensure that the sureties are local, reliable and men of means.

8. Needless to mention that the observations recorded in this order are tentative in nature and shall not prejudice the proceedings before the learned trial court where the case be decided on its own merits after recording evidence.

Announced on  
3rd April, 2019.

**SENIOR PUISNE JUDGE**