

2010 S C M R 1861**[Supreme Court of Pakistan]****Present; Iftikhar Muhammad Chaudhry, C. J. Ch. Ijaz Ahmed and Jawwad S. Khawaja, JJ****MUDASSAR ALTAF and another---Petitioners****Versus****THE STATE---Respondent**

Criminal Petition No. 400 of 2009, decided on 23rd July, 2009.

(Against the order dated 19-5-2009 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi, in Criminal Misc. Nos. 483-B, 422-B and 618-B of 2009).

(a) Criminal Procedure Code (V of 1898)---

---S.497(1)---Bail, grant of---Offences falling under prohibitory clause of S. 497, Cr. P. C. ---Factors to be considered---Scope.

Courts have to consider following factors while deciding bail applications in cases of offences punishable with death, imprisonment for life or imprisonment for ten years:-

- (i) Benefit of reasonable doubt.
- (ii) Identity of accused.
- (iii) Role attributed to each of accused and part allegedly played by accused in occurrence.
- (iv) His presence at spot.
- (v) Question of vicarious liability.
- (vi) Allegations mentioned in F.I.R.
- (vii) Statements of prosecution witnesses recorded under S.161, Cr.P.C.
- (viii) Other incriminating material collected by prosecution.
- (ix) Any plea raised by accused.

Tariq Bashir's case PLD 1995 SC 34 and Muhammad Nawaz Khan's case 1994 SCMR 1064 rel.

(b) Constitution of Pakistan (1973)---

---Art. 185 (3)---Bail---Supreme Court, jurisdiction of---Scope---Supreme Court is Constitutional Court and normally does not interfere with matters concerning grant of bail or refusal of bail by High Court.

Muhammad Ismail's case PLD 1989 SC 585, Sultan Khan's case PLD 1997 SC 642 and Haji Gulu Khan's case 995 SCMR 1765 rel.

(c) Criminal Procedure Code (V of 1898)---

---S.497---Bail---Observations of superior court---Opinion of police---Name of accused in column No.2 of Challan---Observations made by superior courts while dealing with question of bail, are intended only for limited purpose---Mere mentioning of name of accused in column No.2 while submitting challan by police does not debar courts to evaluate material on record---Finding of police is not binding on court and while granting or refusing bail, courts can take into consideration such aspect of the matter---Observation of Supreme Court or courts below while deciding bail applications are tentative in nature which are not binding upon Trial Court which is duty bound to decide case on the basis of evidence adduced by parties before it without being influenced by any observation of Supreme Court or High Court.

Haji Inayat-ul-Haq's case 1988 SCMR 1743; Iqbalur Rehman's case PLD 1974 SC 83 and Gul Ahmed's case 1997 SCMR 27 rel.

(d) Administration of justice---

---Each and every criminal case is to be decided on its own peculiar circumstances and facts.

(e) Constitution of Pakistan (1973)---

---Art. 185(3)---Penal Code (XLV of 1860), Ss. 302/324/148/149---Qatl-e-amd and attempt to commit qatl-e-amd---Bail, grant of---Double murder---Specific role---Placing accused in column No. 2 of challan---Accused was involved in case after one day through supplementary statement of injured complainant---In the incident two persons were murdered and specific role was attributed to accused---Prosecution witnesses also supported version of complainant by implicating him in commission of offence---Plea raised by accused was that his name was placed in column No. 2 of Challan submitted by investigating officer---Validity---Trial Court as well as High Court refused to exercise discretion in favour of accused with cogent reasons---Ipse dixit of police was not binding on the court and court was well within its right to evaluate all material which was placed before it---Supreme Court declined to exercise discretion in favour of accused---Leave to appeal was refused.

(f) Words and phrases---

---- 'Opinion'-Meaning.

(g) Equity---

----He who seeks equity must come with clean hands.

Ch. Afrasiab Khan, Advocate Supreme Court for Petitioners.

Chaudhry Muhammad Tariq, Additional Prosecutor-General, Punjab for the State.

Malik Anwarul Haq, Advocate Supreme Court and Sanaullah Zahid, Advocate Supreme Court for the Complainant.

ORDER

CH. IJAZ AHMED, J.---Petitioners seek leave to appeal against the order of the Lahore High Court, Rawalpindi Bench, Rawalpindi, wherein their petitions under section 497, Cr.P.C. for grant of bail after arrest were dismissed.

2. Learned counsel for the petitioner does not press this petition to the extent of Mudassar Altaf, petitioner No.1, which is dismissed to his extent as not pressed.

3. Detailed facts have already been mentioned in F.I.R. No. 474 which was registered at Police Station Dina District Jhelum under sections 302/324/148/149, P.P.C. on the complaint of Muhammad Raziq Mehmood. However, necessary facts for disposal of this petition are that M. Ghaffar, S.I., Police Station Dina City had recorded the statement of Muhammad Raziq. According to which on 28-12-2008 he along with his brothers Qaiser Mehmood and Danial alias Jehangir, Faisal Imran (his mamoonzad) and Riffat Mehmood, his brother came out of their house in order to proceed to Police Station Mangala Cantt. When at about 10-30 a.m. they reached Pakistan Chowk, Main Bazar Dina, brother in law of Mudassar Altaf son of Muhammad Altaf resident of Pind Jata whose name was not known to the complainant but he is an army personnel and is absconder from Army, while armed with .30 bore pistol and rifle, stopped them and started straight firing on them. Meanwhile Saeed son of Sher Muhammad, Tayyab Mehmood son of Abid, Shah Nawaz and Mudassar both sons of Muhammad Altaf who were armed with rifles came there and also started straight firing on them. The brother in law of Mudassar made firing with pistol, whereas Shah Nawaz, Tayyab Saeed and Mudassar also made consecutive fires with their rifles on Qaiser Mehmood and Daniyal alias Jehangir, due to which they fell down after getting injuries and died at the spot. Then brother-in-law of Mudassar, Shah Nawaz, Saeed and Mudassar made straight consecutive fires with their rifles and .30 bore pistol on the complainant, Riffat Mehmood his brother-in-law and Faisal Imran (his mamoonzad). Due to the said firing, the complaint as well as his brother Riffat

Mehmood also sustained injuries and they became injured, whereas an injury was also caused on the hand of the Faisal Mehmood (mamoozad) of the complainant. Meanwhile numerous people gathered and three unidentified companions of the above accused who were also armed with rifles reached there who also made straight firing on the complainant party.

4. Petitioner No. 2 filed application for bail after arrest in the court of Additional Sessions Judge Jhelum who dismissed the same vide order dated 18-4-2009. Petitioners filed joint application for bail after arrest in the court of Additional Sessions Judge, Jhelum, who dismissed the same vide order dated 22-4-2009. Thereafter petitioners filed Criminal Miscellaneous No. 422-B of 2009 and No. 483-B of 2009 in the Lahore High Court, Rawalpindi Bench, which were dismissed by a consolidated judgment dated 19-5-2009. Subsequently petitioner No.2 again approached the Lahore High Court, Rawalpindi Bench, Rawalpindi, by filing Criminal Miscellaneous No. 618-B of 2009 for grant of bail after arrest which was also dismissed vide order dated 15-6-2009. Hence the present petition.

5. Learned counsel for the petitioner submits as under:-

- (i) That name of the petitioner was not mentioned in the F.I.R. as is evident from the contents of the F.I.R. wherein the name of Shah Nawaz accused was mentioned.
- (ii) Petitioner was involved in the said case on the supplementary statement of complainant Muhammad Raziq which was recorded by the police on 30-12-2008.
- (iii) Petitioner has attached school leaving certificate of one Shah Nawaz son of Muhammad Raziq. This fact was not considered by the learned High Court at the time of refusing to exercise discretion in favour of the petitioner.
- (iv) The name of Shahbaz petitioner, was inserted in place of aforesaid Shah Nawaz through supplementary statement on account of malice whereas complainant must have mentioned his name before the police in his statement recorded on 28-12-2008.
- (v) The investigating agency submitted the challan under section 173, Cr.P.C, before the competent court wherein petitioner was declared innocent and his name was mentioned in Column No.2 of the challan.

6. Learned counsel for the complainant submits that complainant had nominated the petitioner in his supplementary statement which was recorded by the police on 30-12-2008 wherein he had explained the circumstances on the basis of which name of Shah Nawaz was mentioned by police in F.I.R. instead of petitioner Shahbaz. He further submits that Shah Nawaz and Mudassar Altaf are sons of

Muhammad Altaf who are real brothers and in the F.I.R. names of other accused are mentioned except Shah Nawaz. The contents of the F.I.R. depict that the name of Shah Nawaz is mentioned in the F.I.R. wrongly in place of Shahbaz Altaf. The Investigating Officer has mentioned name of the petitioner in Column No. II under the influence of the accused party and he has explained the circumstances to that effect.

7. Ch. Muhammad Tariq, Additional Prosecutor-General, Punjab, submits that challan has already been submitted before the competent court. The trial has already been commenced. Statements of five witnesses have been recorded. The trial could not be concluded on account of non-cooperation of the accused party as depicted from the order sheet of the trial Court which presented by him during the arguments.

8. Learned counsel for the petitioner in rebuttal submits that case of the petitioner is of further inquiry as his name was mentioned by the complainant in supplementary statement on 30-12-2008 whereas occurrence had taken place on 28-12-2008. The investigating agency had submitted challan wherein the petitioner was declared innocent. Both the courts below erred in law not to exercise their discretion in favour of the petitioner.

9. We have given our anxious consideration to the contentions of the learned counsel for the parties and perused the record with their able assistance. It is settled proposition of law that the courts have to consider following factors while deciding bail applications in cases of offences punishable with death, imprisonment for life or imprisonment for ten years:

- (i) Benefit of reasonable doubt.
- (ii) Identity of the accused
- (iii) Role attributed to each of the accused and part allegedly played by the accused in the occurrence.
- (iv) His presence at the spot.
- (v) Question of vicarious liability.
- (vi) Allegations mentioned in the F.I.R.
- (vii) Statements of the prosecution witnesses recorded under section 161, Cr.P.C.
- (viii) Other incriminating material collected by the prosecution.
- (ix) Any plea raised by the accused.

10. The aforesaid principles are supported by various pronouncements including Tariq Bashir's case (PLD 1995 SC 34) and Muhammad Nawaz Khan's case (1994 SCMR 1064). It is also settled principle of law that this Court is a Constitutional Court and normally does not interfere with matters concerning grant of bail or refusal of bail by the learned High Court. See Muhammad Ismail's case (PLD 1989 SC 585), Sultan Khan's case (PLD 1997 SC 642) and Haji Gulu Khan's case (1995 SCMR 1765).

11. It is also settled principle of law that the observations made by the superior courts, while dealing with question of bail, are intended only for that limited purpose. Mere mentioning the name of the accused in Column No.II while submitting challan by the police does not debar the courts to evaluate the material on record and finding of the police is not binding on the court and that while granting or refusing bail, the courts can take into consideration this aspect of the case. See Haji Inyat -ul-Haqs's case (1988 SCMR 1743), Iqbalur Rehman's case (PLD 1974 SC 83) and Gul Ahmed's case (1997 SCMR 27).

12. It is also settled law that each and every criminal case is to be decided on its own peculiar circumstances and facts. It is better and appropriate to reproduce basic facts in chronological order to resolve the controversy between the parties which are as follows:

- (i) F.I.R. was lodged on 28-12-2008.
- (ii) Name of the petitioner is mentioned as Shah Nawaz instead of Shahbaz Khan.
- (iii) Correct name of the petitioner was mentioned as Shahbaz Altaf in supplementary statement dated 30-12-2008.
- (iv) The relevant contents of the F.I.R. are as follows:--
- (v) Mudassar Altaf and Shahbaz Altaf are real brothers.
- (vi) Petitioners filed application for bail after arrest in the Court of Sessions Judge, on 4-3-2009 without attaching school leaving certificate of Shah Nawaz son of Muhammad Raziq which was dismissed by Additional Sessions Judge, Jhelum, vide order dated 18-4-2009.
- (vii) Petitioner filed Criminal Miscellaneous No. 422-B of 2009 in the Lahore High Court without attaching school leaving certificate of said Shah Nawaz which was dismissed by the learned High Court on merits vide judgment dated 19-5-2009. Petitioners filed Criminal Miscellaneous No. 618-B of 2009 filed in the Lahore High Court, Rawalpindi Bench without annexing school leaving certificate of said Shah Nawaz.
- (viii) During the pendency of said petition, he filed Criminal Miscellaneous Application No. 205 of 2009 with the prayer for placing on record a

copy of school leaving certificate of Shah Nawaz son of Muhammad Raziq.

- (ix) Criminal Miscellaneous Application No. 205 of 2009 filed in the said petition which was allowed just all exceptions and main petition was dismissed vide order dated 15-6-2009 on the ground that petitioner's first application was dismissed on merit, therefore his second application was not maintainable as the second application was not filed, based on any fresh ground.

13. In case, all the aforesaid facts are put in juxtaposition then it is crystal clear that petitioner was not granted bail in view of dismissal of his first application on merit. In the interest of justice and fairplay we have examined the case on merit with the assistance of the learned counsel of the parties and perused the record. The petitioner was involved in the case after one day through supplementary statement of injured complainant. It is pertinent to mention here that in the incident in question two persons were murdered. Specific role was attributed to the petitioner. The prosecution witnesses also supported the version of complainant by implicating him in the commission of offence. The trial Court as well as the High Court had refused to exercise discretion in favour of the petitioner with cogent reasons. It is settled principle of law that ipse dixit of the police is not binding on the court. Courts are well within their rights to evaluate all the material which was placed before them. The meaning of word "opinion" according to Webster's Dictionary is as follows:--

"Opinion, according to Webster means: a view, judgment, or appraisal formed in the mind about a particular matter, a belief stronger than impression and less stronger than positive knowledge; a generally held view."

14. Keeping in view all the circumstances highlighted hereinabove we are not inclined to exercise our discretion in favour of the petitioner particularly when the statements of five witnesses had already been recorded and trial could not be concluded on account of non-cooperation of the accused party. It is settled principle that he who seeks equity must come with clean hands. As mentioned above, observation of this court or the courts below while deciding the bail applications are tentative in nature which are not binding upon the trial Court which is duty bound to decide the case on the basis of evidence adduced by the parties before it without being influenced by any observation of this Court or the High Court.

15. In view of what has been discussed above, this petition has no force and the same is dismissed. Leave refused. However, the learned trial Court is directed to decide the case as expeditiously as possible. Learned counsel of the parties are directed to cooperate with the trial Court so that the matter may be finalized expeditiously.

M.H./M-106/SC Petition dismissed.

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