

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

**Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.**

Criminal Appeal No.27 of 2018
(Filed on 20.08.2018)

Nazar Yousaf s/o Muhammad Yousaf, Caste Rajpoot, r/o Rajdhani, Tehsil Khuiratta, District Kotli, presently detained in District Jail Kotli.

....APPELLANT

VERSUS

1. The State through Hukamdad s/o Raja Farman Ali Khan, Caste Rajput r/o Rajdhani, Tehsil Khuiratta District Kotli.

.... RESPONDENT

2. Advocate-General.

....PROFOMRA- RESPONDENT

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 27.07.2018 in Cr. Revision Petition No.89/2018)

FOR THE APPELLANT: Mr. Abdul Aziz Ratalvi,
Advocate.

FOR THE STATE: Mr. Muhammad Zubair
Raja, Additional
Advocate-General.

FOR THE COMPLAINANT: Ch. Muhammad
Mumtaz, Advocate.

Date of hearing: 19.11.2018.

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeal has been filed against the judgment of the Sharait Appellate Bench of the High Court (*hereinafter to be referred as the High Court*) dated 27.07.2018, whereby the criminal revision petition filed by the appellant, herein, has been dismissed.

2. The facts forming the background of the captioned appeal are that a case was registered on the written report of Raja Hukamdad Khan, Complainant, in the offences under sections 302, 324, 337, 337H(2) and 34, APC, at Police Station Khui-ratta on 12.10.2014 at 12:00 pm, against Muhammad Yousaf, Muhammad Nazar, Muhammad Nazim and Muhammad Azhar

(accused). It was stated in the said report that the complainant and the accused are co-relatives and due to a dispute over the land, they had nursed a rivalry against each other. On 12.10.2014, at about 10:00 pm, he along with his brother Muhammad Razzaq, was going towards home from Phalni Bazaar. After crossing the bridge, when they reached at the front of the shops of their brothers, Muhammad Aslam and Muhammad Javaid, they found there the accused armed with pistols, whereas Muhammad Aslam and Muhammad Javaid, were sitting in front of their shops. It was further stated that all the accused armed with lethal weapons and having common intention, attacked Muhammad Aslam. The accused, Muhammad Nazar, fired a shot with pistol at left side of the chest of Muhammad Aslam, meanwhile, Muhammad Yousuf, accused, fired with pistol which hit at right side of the abdomen of Muhammad Aslam, who fell on the cot. The accused, Muhammad Nazim, fired 2/3 shots at his right thigh of Muhammad Aslam

who had fallen on the cot. The accused, Muhammad Azhar, also fired shots at Muhammad Aslam. The accused, Muhammad Nazar, also fired at Muhammad Javaid, which hit him near his right shoulder due to which he also fell down. The said accused fired second bullet shot which hit on right side of lower abdomen of Muhammad Javaid. Meanwhile, Muhammad Azhar, accused started aerial firing while raising lakara that no one shall go alive. On hue and cry by the complainant and Muhammad Razzaq, the accused fled away from the scene of occurrence. The occurrence was witnessed by Muhammad Irfan, Shahzaib and some other people of the locality. The injured, Muhammad Aslam succumbed to the injuries in the way to hospital, whereas Muhammad Javaid, injured was shifted to RHC Khui-ratta. It was stated that the accused committed the murder by hatching conspiracy and pre-planning, therefore, the action under law may be taken against them.

3. After conducting thorough investigation in the matter, a challan in the offences under sections 302, 109 and 34, APC, read with section 13 of the Arms Act, 1965, was presented before the Court of competent jurisdiction. In the first round, the appellant along with co-accused applied for post-arrest bail upto this Court but failed. In the second round of litigation, the accused applied for bail on the statutory ground of delay in conclusion of trial before District Court of Criminal Jurisdiction, Kotli, on 07.02.2017 which was rejected vide order dated 06.03.2017. Against the said order the accused filed a revision petition before the High Court on 01.11.2017, which also met the same fate vide order dated 24.11.2017. Against the said order the accused, except the appellant, herein, filed an appeal before this Court which was accepted and they were released on bail. In the instant/third round, the accused-appellant applied to the District Court of Criminal Jurisdiction Kotli for grant of bail on 10.05.2018 on the ground of statutory delay in

conclusion of trial which was rejected vide order dated 12.06.2018. Against the said order, he filed a revision petition before the High Court. The learned High Court through the impugned order has dismissed the revision petition, hence this appeal.

4. Mr. Abdul Aziz Ratalvi, Advocate, the learned counsel for the accused-appellant argued that the learned High Court while passing the impugned order has failed to exercise the discretion in a judicious manner without taking into account that the injuries sustained by the deceased and attributed to the appellant were not fatal in nature and the death of the deceased was not caused due to the said injuries. He added that the findings recorded by the learned High Court regarding the appellant as hardened, desperate and dangerous criminal are against the record which may prejudice the case of the appellant at the stage of the trial, as no material was available before the learned High Court for declaring him as hardened, desperate and dangerous criminal. Such like findings

are against the pronouncement/principle of law laid down by this Court in numerous cases. He forcefully argued that the accused-appellant is behind the bars for the last more than 4 years and the trial Court failed to concluded in spite of the fact that no delay was occasioned on the part of the accused-appellant. He added that the basic concept of bail is that the liberty of an innocent person cannot be curtailed until and unless the guilt is proved against such person. Even otherwise, the accused-appellant cannot be detained for an indefinite period as a punishment prior to the trial. He added that the learned High Court has refused the concession of bail to the accused-appellant on the ground that he is hardened, desperate and dangerous criminal, whereas no such ingredients for declaring him as such were available on the record, thus, the findings recorded by the learned High Court are not only against the record but also against the enunciated principle of law laid down by this Court.

He relied upon the cases reported as [2014 SCR 750], [2015 SCR 1060] and [PLD 1990 SC 934].

5. On the hand, Ch. Muhammad Mumtaz, Advocate, counsel for the complainant while opposing the arguments addressed by the counsel for the appellant, submitted that after making tentative assessment of the material available on record, the learned High Court has rightly come to the conclusion that the accused-appellant is not entitled for concession of bail. He added that the accused-appellant actively participated in the occurrence. He fired several shots from his pistol on the vital part of the deceased persons and due to the bullet injuries inflicted by him the death of the deceased was occurred. In support of his version, the learned counsel referred to the medico legal report. He further added that this is the third round. In the earlier round, the concession of bail was refused to the accused-appellant by the learned High Court while declaring him as hardened, desperate and dangerous criminal and those findings are still intact to

the extent of the accused-appellant as he did not challenge the same before this Court. In view of the previous order passed by the learned High Court, the impugned order/judgment has rightly been passed, which is not open for interference by this Court. The accused-appellant is not entitled for concession of bail. He requested for dismissal of appeal.

6. Mr. Muhammad Zubair Raja, Additional Advocate-General while supporting the arguments of the counsel for the complainant submitted that the trial is near to completion, therefore, it would be appropriate to issue a direction to the trial Court for expeditious conclusion of the trial.

7. We have heard the learned counsel for the parties along with the learned Additional Advocate-General and gone through the impugned judgment along with the other material made available on the record. The counsel for the complainant has vehemently argued that in the earlier round, the accused-appellant applied for grant of bail before the

learned High Court but the same was refused on the ground that the accused is hardened, desperate and dangerous criminal. Against the said order of the learned High Court no appeal was filed by him, hence the judgment of the learned High Court has attained finality. Keeping in view the peculiar facts and circumstances of the case, irrespective of the fact; whether in the light of material available on record, the accused is hardened, desperate and dangerous criminal, as it has been brought into the notice of the Court that most of the witnesses of the occurrence have been examined whereas, very few are left to be examined and the trial may be concluded within a month's time, in our opinion, instead of dilating upon the point of hardened, desperate and dangerous criminal, which may prejudice the case of either party, the issuance of direction to the trial Court for expeditious conclusion of the trial will be in the interest of justice.

8. Therefore, keeping in view the overall facts and circumstances of the case, the trial Court is directed to ensure the completion of evidence within a period of one month and thereafter the conclusion of the trial expeditiously in accordance with law, without taking any influence from the judgments of the learned High Court.

With the above observation, this appeal stands disposed of.

	JUDGE	JUDGE
Mirpur.		