

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Shariat Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Criminal Revision No.12 of 2019
(Filed on 05.11.2019)

Waqas Habib s/o Muhammad Habib Khan, r/o Banjosa,
Tehsil Rawalakot, District Poonch (under trial prisoner),
detained in judicial lock-up, Rawalakot.

....PETITIONER

VERSUS

1. Khalid Mehmood s/o Muhammad Ishaq, caste
Sudhan, r/o Dothan, Tehsil Rawalakot, District
Poonch, A.K.
2. The State through Advocate-General of AJ&K.

..... RESPONDENTS

(On revision from the judgment of the Shariat
Appellate Bench of the High Court dated
29.10.2019 in revision petition No.106 of 2019)

FOR THE PETITIONER: Sardar Shamshad Hussain
Khan, Advocate.

FOR THE COMPLAINANT: Mr. Zaffar Iqbal Azad,
Advocate.

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

Date of hearing: 03.02.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J.— This revision petition has been directed against the judgment dated 29.10.2019, passed by the Shariat Appellate Bench of the High Court in revision petition No.106 of 2019.

2. The necessary facts giving rise to the captioned revision petition are that on 03.06.2019, at about 9:30 p.m., the complainant lodged a report at Police Station, City Rawalakot, stating, therein, that today i.e 03.06.2019, Liaqat Hayat Group including Ejaz Aziz, Zeeshan Aziz, Wajid Khurshid, Chief Organizer, National Students Federation (NSF), organised an *Iftar* party at Chota Galla, wherein, his younger brother namely Aqib Ali w/o Muhammad Ishaq also participated along with other 40/50 people. It was further stated that at about 8 p.m., the complainant was intimated that someone has shoot his brother and people are taking him to CMH Rawalakot. It was further stated that on this, the complainant rushed to CMH Rawalakot where he found the dead-body of his brother, Aqib Ali. It was further

stated that on inquiry, the complainant came to know that during the procession of the workers of NSF at Chota Galla Bazar at 7:50 p.m., Sohail Akbar s/o Muhammad Akbar, Naqqash Rasheed s/o Muhammad Rasheed, Rehman Khalil s/o Muhammad Khalil, Wajid Butt s/o unknown, r/o Darek, Basharat s/o unknown and Waqas Habib, residents of Chota Galla, started indiscriminate firing, as a result whereof, a bullet hit at the head of the brother of the complainant, whereupon, he was taken to CMH Rawalakot but on the way he succumbed to the injury. On this report, a case in the offences under sections 302, 324, 337-A, 147, 145, 149 and 109, APC, was registered against the petitioner, herein and others. During the investigation, the accused-petitioner, herein, and other accused nominated in the FIR were arrested by the Police. The accused-petitioner, herein, moved an application for grant of bail after arrest before the District Court of Criminal Jurisdiction, Rawalakot which after necessary proceedings was dismissed vide order dated 27.08.2019. Feeling aggrieved, the accused-petitioner,

herein, filed revision petition before the Azad Jammu & Kashmir High Court on 23.09.2019. The learned High Court after hearing the parties, through the impugned judgment dated 29.10.2019 has dismissed the revision petition.

4. Sardar Shamshad Hussain Khan, the learned Advocate appearing for the petitioner vehemently argued that the impugned judgment passed by the learned Shariat Appellate Bench of the High Court as well as the judgment of the trial Court is perverse, illegal and against the record of the case. The learned Advocate further argued that statements of the witnesses including the statement of Aziz Ali s/o Ali Asghar Shah are directly in conflict with the medical evidence and the post-mortem report. The learned Advocate further argued that the petitioner, herein, has not been ascribed with any role of firing indiscriminately rather he has only been ascribed with the role of reloading the gun. The learned Advocate submitted that the accused who have been attributed with the role of firing indiscriminately have been extended the

concession of bail by the learned trial Court but the same has been refused to the petitioner, herein, on flimsy grounds. The learned Advocate further submitted that in the circumstances of this case, the accused/petitioner, herein, is also entitled to be released on bail keeping in view the rule of consistency. The learned Advocate further argued that bail is a statutory right of the accused and he is entitled to the same if proper case is made out within the purview of section 497(2), Cr.P.C. the learned Advocate further submitted that this right cannot be snatched arbitrarily as has been done in the case in hand by the learned Courts below.

5. Mr. Zaffar Iqbal Azad, the learned Advocate appearing for the complainant argued with vehemence that the accused/petitioner, herein, has also been ascribed with the role of indiscriminate firing and handing over the gun to the chief accused after reloading it, hence, his role is distinguishable and he cannot claim bail on the rule of consistency. The learned Advocate further argued that the accused/petitioner, herein, has been nominated by the eye

witnesses, therefore, the evidence against him cannot be brushed aside at this stage. The learned Advocate further argued that the learned trial Court has exercised the discretion in a legal fashion and its judgment has rightly been maintained by the learned Shariat Appellate Bench of the High Court. The learned Advocate submitted that interference by this court is only justified when the Courts below fail to exercise discretion in a legal and just manner.

6. Mr. Muhammad Zubair Raja, the learned Additional Advocate-General has adopted the arguments advanced by the learned counsel for the complainant.

7. We have heard the learned counsel for the parties and have gone through the record of the case. It is settled law that deep appreciation of evidence cannot be made at bail stage because any observation on merits of the case can prejudice the case of prosecution or the defence at trial, however, the Court is bound to make tentative assessment of the material collected by the investigating agency and the documents submitted along

with the *challan* etc. While deciding a bail application, the Court has to struck balance between the accused and the complainant on one hand and between the accused and the society on the other hand but at the same time for the purpose of bail, law cannot be stretched in favour of the prosecution. Where any benefit of doubt arises on the basis of record, the same is liable to be resolved in favour of the accused even at the bail stage as has been held in the case reported as *Amir vs. The State* [PLD 1972 SC 277]. This Court in the case reported as *Muhammad Abbas & another vs. The State* [PLD 1988 SC (AJ&K) 14], has held that bail cannot be refused for the purpose of punishment merely on the allegation that a person has committed an offence punishable with death or transportation for life unless reasonable grounds appear to exist to disclose his complicity. In para No.22, at page 23 of the report, it was observed as under:-

“22. Broadly speaking every case *challaned* or otherwise can be argued to be a case of further inquiry in the sense that the innocence or the guilt of a person accused can only be fixed after complete trial. But the words ‘further inquiry’ for the purposes of bail are to be construed in accordance

with the wisdom of the Legislature under section 497 (2) of the Code of Criminal Procedure. So far we understand where a person, on the material made available cannot safely be held liable for the offence charged, it should be said that sufficient evidence within the meaning of section 497 (2), Code of Criminal Procedure, is not available to connect the person with the offence charged but there exist reasonable grounds for further inquiry to connect the person with the offence charged.”

In view of the observation recorded in the above case and while taking into consideration, the statements of the witnesses recorded under section 161, Cr.P.C., post-mortem report and the *challan*, we are of the view that the accused/petitioner, herein, is entitled to be released on bail. In this case, the only allegation levelled against the accused/petitioner, herein, is of reloading the pistol and handing over the same to the chief accused which requires further inquiry within the ambit of section 497 (2), Cr.P.C. Those who have been ascribed the role of indiscriminate firing have been released on bail by the learned trial Court. In our view, the role ascribed to the accused/petitioner, herein, is not different, hence, rule of consistency was applicable in his case and he was also entitled to the concession of bail.

In view of the above, this revision petition is accepted and the judgments of the Courts below are hereby set aside. Resultantly, the application for bail after arrest filed by the accused-petitioner, herein, is hereby accepted. He shall be released on bail forthwith in the offences under sections 302, 324, 337-A, 147, 145, 149 and 109, APC, subject to furnishing bail bond amounting to Rs.10,00,000/- (ten lac) consisting of two sureties and personal bond of the like amount to the satisfaction of any Magistrate 1st Class, Rawalakot. The sureties shall be of sound financial position.

JUDGE

CHIEF JUSTICE

Muzaffarabad
03.02.2020