

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE JAMAL KHAN MANDOKHAIL  
MR. JUSTICE MUHAMMAD ALI MAZHAR  
MR. JUSTICE SYED HASAN AZHAR RIZVI

**CRIMINAL PETITION NO.1054 OF 2023**

(On appeal from the judgment dated 09.08.2023  
passed by the Peshawar High Court, Peshawar in  
Cr.M(B.A) No.2414-P/2023)

Akhtar s/o Gul Zameer

...Petitioner

**VERSUS**

Khwas Khan and another

...Respondents

For the Petitioner: Mr. Sher Aman Khan, ASC

For the State: Mr. Altaf Khan, Addl. AG, KPK  
Mr. Ziarat Gul, SI, Mardan

For Respondent No.1: In-Person

Date of Hearing: 23.10.2023

**Order**

**MUHAMMAD ALI MAZHAR, J:-** This Criminal Petition is directed against the Order dated 09.08.2023, passed by the learned Peshawar High Court in Cr.M(B.A) No.2414-P/2023 whereby the application moved for post-arrest bail was dismissed.

2. The complainant lodged FIR No. 1177/2022 on 11.12.2022 under Sections 302, 201, 120-B and 109 of the Pakistan Penal Code, 1860 ("PPC"), and Section 15 of the Khyber Pakhtunkhwa (KPK) Arms Act, 2013 ("**Arms Act**") at Police Station Rustam, District Mardan. According to the minutiae of the First Information Report, the complainant Khawas Khan initially reported the incident to the local police against the unknown persons and alleged that on the day of occurrence he was present in his block factory where he received

information about the murder of his brother, namely Pardul Khan, who was killed after being fired at by unknown persons. He thereafter rushed to the hospital where he found his brother dead. The complainant, having no enmity or animosity, reported the incident to the local police against unknown accused persons for the murder of his brother. The record further reflects that on 15.12.2022, the complainant appeared before the Judicial Magistrate-II, Mardan for recording his statement under Section 164 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") in which he implicated the petitioner for the murder of his brother, allegedly on account of a previous quarrel between the deceased and petitioner. After the arrest of the petitioner, the alleged involvement of two co-accused, Inzar Gul and Ali Bahadar, also came to the surface during the investigation, revealing that Inzar Gul, the paternal uncle of the deceased, paid head money to Ali Bahadar, the co-accused, who hired the petitioner for committing the murder on the motive of abduction of Mst. Bakht Bibi, niece of Inzar Gul.

3. The learned counsel for the petitioner argued that no reasonable grounds exist to connect the petitioner with the commission of the offence. No such allegation was leveled by the complainant in the FIR against the petitioner, rather, later on, with consultation and deliberation, the petitioner was charged for the commission of the offence. It was further contended that neither anything was recovered from the petitioner, nor any specific role has been attributed to the accused, nor is there any eye witness of the occurrence. He further argued that the investigation has been completed which itself revealed that the case was one of further inquiry. He further averred that the other co-accused in the instant case have already been released on bail, hence the present accused is also entitled to the concession of bail on the rule of consistency.

4. The learned Additional Advocate General for KPK argued that during the investigation the petitioner was found guilty. He further argued that when the petitioner absconded, a 30 bore pistol was recovered from his brothers, Muzamil and Ajab Khan, from a common abode and, according to Forensic Report, two crime empties were fired from the same pistol, hence a separate FIR No.1208/2002 was also lodged against Muzamill and Ajab Khan under Section 15 of the Arms Act at Police Station Rustam, District Mardan. However, he admits that

neither the said pistol was recovered from the present petitioner, nor he has been implicated in the subsequent FIR. He further relied on a picture of a motor bike captured through CCTV footage, showing the petitioner sitting on the back seat thereof; however he admitted that this picture was not captured from the scene of the crime.

5. Arguments heard. It is an admitted position that the name of the petitioner is not mentioned in the FIR which was against some unknown persons. There is also no eye witness of the incident. The pistol was recovered in the absence of the petitioner, from his brother, for which a separate FIR has been lodged. Even if the empties recovered from the scene of the crime are matched, it is to be seen by the Trial Court after recording evidence whether the bullets were shot by the petitioner or not. Reliance on a single picture captured from a CCTV system cannot be treated as a substantial piece of evidence at this stage, rather it is subject to the evidence, as may be recorded by the Trial Court, whether it has any nexus to the scene of crime. The FIR was lodged on 11.12.2002 against unknown persons but on 15.12.2022 the complainant, by means of statement recorded under Section 164, Cr.P.C., implicated the petitioner on the ground that there was a quarrel between the deceased and the petitioner, which alleged incident was in the knowledge of the complainant, but no such indication or disclosure was made while lodging the FIR. According to the investigation, the petitioner disclosed to the police that Ali Bhadur paid head money for the deceased and the head money was given by Inzar Gul for payment to the petitioner. Ali Bahdur was already on bail while Inzar Gul was granted bail by this Court *vide* Order dated 09.06.2023 in Criminal Petition No.352/2023. So far as the alleged confession of the petitioner before police during investigation is concerned, the niceties of Article 38 of the Qanun-e-Shahadat Order 1984 are quite lucid that no confession made to a police officer shall be proved as against a person accused of any offence, while Article 39 emphasizes that, subject to Article 40, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Seemingly, a confession made before the police is not made admissible by dint of the aforesaid provisions of the Qanun-e-Shahadat Order 1984 in order to preserve and safeguard the philosophy of safe administration of criminal justice and is also based

on public policy. In the aforesaid backdrop, we are sanguine that the case of petitioner requires further inquiry to prove his guilt which can only be thrashed out after recording of evidence in the Trial Court.

6. It is a well settled notion of law that further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion. It pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. The law of bails is not a stagnant law but is developing with the exigencies of time. The expression "reasonable grounds" as contained under Section 497, Cr.P.C., necessitated the prosecution to show that it is in possession of sufficient material or evidence to demonstrate that accused had committed an offence falling within the prohibitory limb of Section 497, Cr.P.C. However for seeking the concession of bail, the accused person has to show that the material or evidence collected during investigation against him creates reasonable doubt or suspicion in the prosecution case. While deciding bail applications, it is the foremost duty of the Courts to apply a judicious mind tentatively for reaching the just and proper conclusion regarding whether reasonable grounds are made out or not to enlarge the accused on bail, and the expression 'reasonable grounds' signifies and corresponds to the grounds which are legally rational, acceptable in evidence and attractive to the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous. Whenever reasonable doubt ascends with regard to the involvement of an accused person in the crime or about the certainty or probability of the prosecution case and the evidence proposed to be produced in support of the charge in Court during trial, the accused should not be deprived of the benefit of bail and it would be better to keep him on bail than in jail. The basic idea is to enable the accused to answer the criminal prosecution against him rather than to make him rot behind bars. The accused is entitled to expeditious access to justice, which includes the right to a fair and expeditious trial without any unreasonable or inordinate delay. Certain basic principles regarding grant or refusal of bail are settled i.e. that bail cannot be withheld as punishment; every person is presumed to be innocent unless found guilty by a competent court; every person is entitled to a fair trial, which includes a trial without inordinate delay; and that the basic philosophy of criminal

jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including the pre-trial stage, and even at the time of deciding whether the accused is entitled to bail or not.

7. This Criminal Petition for leave to appeal was fixed for hearing on 23.10.2023 when the same was converted into appeal and allowed *vide* our short order, which is reproduced as under:

“For the reasons to be recorded later, this petition is converted into an appeal and allowed. The petitioner is granted post-arrest bail subject to his furnishing surety bond in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of the Trial Court. He shall be released forthwith if not required in any other case.”

8. Above are the reasons assigned in support of our short order. The observations made in this order are tentative in nature and shall not prejudice the case of either party in the Trial Court.

Judge

Judge

Judge

Islamabad  
23<sup>rd</sup> October, 2023  
Khalid  
Approved for reporting.