

P L D 1985 Lahore 211

Before Riaz Ahmad, J,

NAWAB KHAN AND ANOTHER-Petitioners

versus

THE STATE-Respondent

Criminal Miscellaneous No. 3318/B of 1984, decided on 9th December, 1984.

Criminal Procedure Code (V of 1898)-

-- S. 497 --Penal Code (XLV of 1860), Ss. 302, 307 & 34[Murder]-Ineffective firing by accused and divisibility of evidence Bail in a murder case, held, could not be granted on laboured pretext, such as concept of further inquiry, ineffective firing and divisibility of evidence-High Court in bail matters not to pre-empt or usurp jurisdiction vesting in trial Court to give considered findings after appraisal of evidence-Philosophy behind grant and refusal of bail discussed.

The petitioners were placed in column No. 3 of the report under section 173, Cr. P. C. and merely because the firing attributed to them was ineffective, does not furnish any basis, to hold that there are no reasonable grounds to believe, that the petitioners are guilty of the commission of offence. The principles of vicarious liability were fully attracted to the facts and circumstances of the present case. The law of bail does not permit the High Court to pre-empt or to usurp the jurisdiction vesting in the trial Court to give considered findings after appraisal of the evidence.

[Link 1](#)

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Dr. Khalid Ranjha and Muhammad Akbar Tarar for Petitioners.

Muhammad Aslam for the State.

JUDGMENT

Vide F. I. R. No. 19 dated 13-3-1984, Police Station Mochh District Mianwali, registered a case on the basis of statement of Shah Alam Khan against the petitioners, Muddad Khan and one Muzaffar Khan, absconder, under the provisions of section 307, P. P. C., read with section 34, P. P. C. for murderous assault on one Muhammad Khan, real brother of the first informant Shah Alam Khan. The injured Muhammad Khan succumbed to his injuries and thus the registration of the case was converted into one under section 302, P. P. C.

2. In support of this application seeking bail on behalf of Nawab Khan and Abbas Khan petitioners, it has been contended that the investigations, in this case, were conducted by at least three Police Officers and no material was available against the petitioners so as to implicate them in the commission of crime. It has been further contended by the learned counsel, that the role attributed to the petitioners was that of ineffective firing and, therefore, the petitioners deserve the grant of bail. It was also submitted that on account of ineffective firing by the petitioners, the case against the petitioners has become that of further inquiry, within the meaning of section 497, Cr. P. C., and the petitioners on this score also deserve the grant of concession of bail.

3. I have gone through the police file and the other relevant papers. The investigation reveals that the parties had agreed to abide by the statement of one Haji Jahangir, a respectable of the village, if taken on oath with regard to the guilt or innocence of the persons involved. The said Haji Jahangir, on oath stated that except Muddad Khan, the rest of the accused named in the F. I. R. had participated in the commission of the crime. Accordingly, the incomplete challan was submitted and only Muddad Khan was placed in column No. 2 of the report under section 173, Cr. P. C. while all others named in the F. I. R. including the petitioners were placed in column No. 3.

4. The learned counsel, relying on the various judgments, has asserted that the material collected during the investigation cannot be believed qua the petitioners because it casts doubt on its veracity because of the placing of Muddad Khan in column No. 2.

5. I am afraid I cannot agree with this contention, because in our criminal jurisprudence, in view of the peculiar circumstances and values adhered to the theory of the indivisibility of the statement of a witness has been discarded. [I am further constrained to observe that the bail in a murder case cannot be granted on laboured pretexts, such as the\) concept of further inquiry, ineffective firing, and the divisibility, of the, evidence. The grant of bail on a laboured pretext reduces the](#)

system and the machinery to curb the crime into a farce. I am conscious of the fact that the bail cannot be withheld as punishment but at the same time, how can one close one's eyes to the constant rise in the rate of crimes and resort to hazardous violence over petty affairs. The philosophy behind the grant and refusal of bail contains wisdom, because withholding the grant of bail deters the aggrieved party to take law into its own hands and the sense of satisfaction in the system of law. In this context it can be safely said, that on account of indiscriminate grant of bails, the multiplication of crime has taken place. The cases are not short where the person released on bail was taken to task and murdered or assaulted by the complainant side.

6. In this view of the matter, I feel that the law governing the grant of bail has been stretched too far, which needs serious consideration to keep the system of the administration of criminal justice intact. Ineffective firing and the consequences thereof are contained in section 307. P. P. C., and need not be dilated upon by me. Can it be said at this stage that the persons who have been attributed ineffective firing did not intend to cause death or the consequences of the act. The intention becomes manifest when the trigger is pressed and also when they join a person who succeeds to hit the target. In this context we become oblivious of the principles of vicarious liability as enunciated in sections 34 and 149 of the Pakistan Penal Code, these are the salutary principles of law, which are twisted, in Courts in support of the grant of bail and the Courts below fall prey, in this process for making out a laboured pretext to grant bail. Apart from the deterrent effect created by the refusal to grant bail, in a proper case, it inculcates faith in the society as to the effectiveness of the system which is sine qua non for saving the society from chaos. I must make it clear that I should not be misunderstood, so as to lay down, that the bail should not at all be granted. My emphasis is mainly on the departure from the well-known and established principles governing the grant of bail as laid down in section 497, Cr. P. C. which has been interpreted by the Supreme Court of Pakistan and this Court on number of occasions.

7. Coming to the facts of this case, the petitioners have been placed in column No. 3 of the report under section 173, Cr. P. C., and merely because the firing attributed to them was ineffective, does not furnish an basis, to hold that there are no reasonable grounds to believe, that the petitioners are not guilty of the commission of offence. The principles of vicarious liability are fully attracted to the facts and circumstances of the present case. The law of bail does not permit this Court to pre-empt or to usurp the jurisdiction vesting in the trial Court to give considered findings after appraisal of the evidence.

8. Judging the case from the prima facie angle, I do not think that the petitioners deserve the grant of bail. Accordingly, this application is dismissed.

M. Z. M. Bail refused.

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