

HIGH COURT OF AZAD JAMMU AND KASHMIR
[Shariat Appellate Bench]

Criminal Appeal No.52/2022;
Date of Institution 09.05.2022;
Date of Decision 30.05.2022.

Muhammad Bashir S/o Shair Ahmed R/o Barsala
(temporary), permanent R/o Changan District Neelum
Azad Jammu & Kashmir.

...Appellant

VERSUS.

1. The State through Muhammad Saeed Khan S/O
Shahdad Khan R/o Barsala;
2. SHO Police Station Chatter Klass Muzaffarabad.

...Respondents

APPEAL AGAINST THE JUDGMENT DATED 29.04.2022,
PASSED BY DISTRICT COURT OF CRIMINAL
JURISDICTION MUZAFFARABAD.

Before;- Justice Mian Arif Hussain, J.

PRESENT:

Mr. Fayaz Ahmed Janjua, advocate for the appellant.

Raja Muhammad Manzoor Khan, advocate for the complainant

Assistant Advocate General on behalf of the State.

JUDGMENT:

Through the captioned appeal, validity of judgment dated 29.04.2022, passed by District Court of Criminal Jurisdiction Muzaffarabad has been called in question, whereby, post arrest bail of the appellant herein in offences under Sections 20 EHA, 354, 458 APC has been rejected.

Succinctly, the facts giving rise to the appeal in hand are that the complainant, preferred a written report

at Police Station Chatter Klassm, on 13.04.2022, alleging therein that he is resident of village Barsala. Last night, about 3:50 am at Sehri time, when all his family members were busy in the kitchen for the purpose of fasting, all of a sudden 5/6 un-known persons entered into his house and while switching off the Generator pointed their pistol, Repeater and dagger upon the complainant and his son and kept them hands up, and snatched Rs.86000/- from the complainant's pocket and also snatched the Keys of vehicles alongwith computerized license, I.D cards and harassed them and after fastening them also threatened to face dire consequences for making noise. It is further alleged that in the meantime, daughter of complainant brought a burning piece of wood from burner and threw the same upon one of the accused person and also raised voice which was heard by the wife of complainant's nephew who came out and knocked at the door, upon which the accused persons fled away.

Upon the said report, an FIR No.23/2022 in the offence under Section 20 EHA was got registered and subsequently, offences under Sections 354, 458 APC and 15(2)AA were added. Initially, the accused Muhammad Asif was arrested. During investigation, on

pointation of Muhammad Asif, the appellant herein, Muhammad Bashir was taken into custody. Both the said accused persons moved separate applications for their post arrest bail before the trial Court. Learned District Court of Criminal Jurisdiction Muzaffarabad seized with the matter, after hearing the learned counsel for the parties, rejected the bail applications, hence, the instant appeal.

The learned counsel appearing for the appellant herein after reading out the contents of FIR contended that no one has been nominated in the FIR and appellant herein has been booked without any justification. It is urged that no recovery has been attributed to appellant herein but while dealing with the application, learned trial Court without determining the role of the appellant herein wrongly observed that recovery has been made from the appellant herein too. It is contended that appellant herein belongs to District Neelum valley and is working as laborer by keeping donkeys for the purpose of lifting sand from river. It is urged that appellant herein is behind the bar since 5th April 2022. It is claimed that role attributed to the appellant herein requires further probe which will be determined after conclusion of the trial. Learned counsel further added that the occurrence is

blind one and the appellant is innocent, hence, the appellant herein may be released on bail.

While defending the judgment impugned herein, the learned counsel representing the complainant argued with vehemence that appellant is head of the professional gang who alongwith other co-accused persons was traced out through technical investigation and the appellant herein was categorically identified by one of female victim and an amount snatched from the complainant has also been recovered from the accused-appellant herein falling within his share to the tune of Rs.10,000/-. It is urged that other incriminating material i.e. pistol and dagger have also been recovered from the possession of appellant herein. It is also urged that appellant alongwith his companions (co-accused) has committed an offence of heinous nature, hence, is not entitled for concession of bail. It is claimed that number of cases of such nature have already been registered against the accused-appellant herein, therefore, trial Court has rightly declined bail application of the accused-appellant herein. Learned counsel referred to and relied upon the following case law:-

1. 2013 YLR 228;
2. 2013 YLR 891;
3. 2009 YLR 590.

On behalf of the State Mr. Sajjad Pirzada appeared before the court and while defending the judgment impugned herein contended that recovery of incriminating material associates the appellant herein with the commission of alleged occurrence, hence, he is not entitled to the concession of bail.

After having heard the learned counsel for the parties as well as the learned State counsel, I have also gone through the record made available with the file.

At the stance of Muhammad Saeed, the complainant a case against the unknown accused persons in the offence under Sections 20 EHA was got registered at police station Chatter Klass, wherein it is alleged that night before 13.04.2022, at about 3:50 am, Sehri time, when the family members of the complainant were busy in the kitchen for the purpose of fasting, all of a sudden, 5/6 unknown persons entered into his house and while switching off the Generator, abruptly pointed their weapons upon the complainant and his son and made them hands up and snatched an amount of Rs.86000/- from the possession of the complainant alongwith keys of vehicles, computerized license, ID card etc. It is further alleged that accused persons also battered them and

after fastening up the inmates of the house, fled away from the scene of occurrence.

From the police record, it depicts that on suspicion, initially, Muhammad Asif was investigated who was found guilty and upon his pointation regarding involvement of other co-accused persons in the occurrence, appellant herein was taken into custody and during investigation, he confessed the guilt and was also identified by the family members of the complainant. From the record it reflects that a dagger and an amount to the tune of Rs.10,000/- has been recovered from the possession of accused-appellant herein. It is pertinent to note here that during investigation, addition of offences under Sections 354, 458 APC and 15 (2) AO has also been made.

So far as non determination of role of appellant herein is concerned, it is observed that in offences of robbery, dacoity etc. individual role of an accused does not matter much and every participant regardless of his role can be considered an accused of equal share. Moreover, it is pertinent to note here that no mala-fide intent and motive is found on the part of complainant to falsely implicate the accused-appellant herein.

In view of material brought on record against the appellant herein and his previous character, apparently, the appellant herein appears to be involved and associated with the alleged occurrence investigation has not been concluded so far and in terms of penalty provided for the offences, the matter falls within the ambit of prohibitory clause of Section 497(1) Cr. P. C.

The crux of the above discussion is that appellant herein, in my estimation is not entitled for concession of bail, therefore, while concurring with the findings of learned trial Court, the appeal in hand stands dismissed.

Muzaffarabad,
30.05.2022(MN)

-Sd-
JUDGE

Note: Judgment is written and duly signed. The office is directed to intimate the parties or their counsel in accordance with law.

-Sd-
JUDGE