

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Cr. Misc. No.2197-B-2016

Rahim Bakhsh alias Shada

Versus

The State etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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03.1.2017	Malik Saeed Ijaz, Advocate for the petitioner. Malik Muhammad Lateef DPG along with Manzoor, S.I. Mehr Ahmad Yar Kathia, Advocate for the complainant.
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Rahim Bakhsh alias Shada, the petitioner seeks post-arrest bail in case FIR No.80 dated 09.6.2014 registered under sections 302, 324, 452, 148, 149, 109, 337-A(i), 337-F(i), 337-F(ii), 337-F(iii), 337-F(iv), 337-F(v), 337-L(ii), 120-B and 201 PPC at Police Station Sadar Ahmadpur East, District Bahawalpur.

2. As per the contents of FIR, the allegations having been levelled are that on 09.6.2014 at about 3.00 p.m. Khan Muhammad etc. while armed trespassed the house of Ashiq, complainant and Khan Muhammad made a fire with rifle at Aashoo Mai which hit on her left cheek, Ameer Bakhsh made a fire with his rifle at Mst. Bakhto Mai which hit her left buttock, Fayyaz Ahmad son of Ameer Bakhsh made a fire hitting Muhammad Nawaz on his left shin, Allah Wasaya gave Sota blows to Mst. Lal Mai on different parts of her body, Rasheed Ahmad gave a hatchet blow to complainant which hit on left side of his head, Ghaus Bakhsh made a fire with his rifle which hit Akram on his left shin, Fayyaz Ahmad son of Manzoor made a fire which hit Mst. Hafiza Bibi on her left buttock, Fayyaz Ahmad son of Meeran gave a hatchet blow to Muhammad Nawaz

which hit on his right shin. Fayyaz Ahmad son of Meeran gave a hatchet blow to Mst. Faiz Mai which hit on her left shin, Akram gave a Sarya blow to Muhammad Nawaz which hit on his head. He again gave a Sarya blow to Mst. Maqsood Mai which hit on her left thumb. Mst. Ashoo Mai succumbed to the injuries on spot. On hearing the hue and cry and voice of firing, people reached there while the accused persons making aerial firing fled away from the spot. Motive behind the occurrence is that Aslam, real brother of complainant purchased 01 kanal 15 marlas land in front of his house while the accused party wanted to dispossess him claiming that they have also purchased it. The other motive behind this very occurrence was murder of brother of Muhammad Nawaz, PW.

3. Learned counsel for petitioner contends that case against petitioner is false and actually he was not named in the FIR but subsequently he was inducted in the case; that no role has been assigned to petitioner and he has been declined bail by learned Additional Sessions Judge only due to the reason that during investigation 12-bore repeater has been recovered from him; that co-accused Muhammad Nawaz, Muhammad Akram and Muhammad Fayyaz, Khan Muhammad and Ashiq have been granted bail by this Court and the case against the petitioner is one of further inquiry.

4. On the other hand, the learned DPG assisted by the learned counsel for complainant fully controverted this bail application.

5. Arguments heard. Record perused.

6. Perusal of record has unfolded that actually FIR was registered at the instance of Ashiq son of Imam Bakhsh who made a specific allegations against Khan Muhammad etc. for the murder of Mst. Ashoo Mai and injuring Muhammad Nawaz, Mst. Lal Mai, Akram, Hafiza Bibi, Fiaz Bibi.

Petitioner has neither been named in the FIR nor any role has been ascribed to him. However, through supplementary statement made by Muhammad Ramzan at belated stage which too does not depict that he has seen the occurrence, petitioner has been named in this case with a general role that accused/petitioner along with co-accused caused murder of Mst. Ashoo Mai. Ashiq complainant/accused of cross-version recorded in the same FIR (No.80/2014) applied for post-arrest bail through Cr. Misc. No.2672-B-2015 and this Court has held as under:-

“Admittedly the FIR of the instant case was lodged at the instance of petitioner being an eye witness/injured of the occurrence. However, the petitioner was involved in the instant case on 6.5.2015 i.e. after about 11 months of the occurrence on the statement made by one Muhammad Ramzan son of Rasool Bakhsh alleging therein that Muhammad Ashiq petitioner along with Allah Nawaz son of Khuda Bukhsh made joint extra judicial confession by stating that the murder was committed by Allah Nawaz. Evidentiary value of such kind of joint extra judicial confession would be adjudged by learned trial Court after recording of evidence of the parties. During the course of investigation nothing was recovered from the possession of the petitioner. He is behind the bars since 16.5.2015. Investigation against the petitioner is complete. Challan has been submitted before learned trial Court where stately trial has not commenced so far. No useful purpose would be served by keeping the petitioner behind the bars for an indefinite period.”

7. Similarly Muhammad Nawaz and Muhammad Akram, accused had also applied for post-arrest bail before this Court through Cr. Misc. No.1182-B-2016 and this Court has held as under:-

“Apart from above, the allegations leveled by the complainant in this case have to be proved after recording of evidence. This case is one of further inquiry and falls within the purview of Section 497(2) Cr.P.C.”

8. Learned counsel for petitioner places reliance on the case reported as **“Syed Khalid Hussain Shah v. The State and another”**(2014 SCMR 12).

In the said case, August Supreme Court of Pakistan has observed as under:-

“Commencement of trial could not come in the way of grant of bail, if in the opinion of the court, a case for further inquiry was made out.”

9. Learned counsel for petitioner also places reliance on the case reported as **“Havaas Khan v. The State and 2 others”**(2014 Y L R 2532) in which it has been observed as follows:

“.....Bail of accused could not be withheld as a punishment merely on the ground that he was charged for a heinous offence, when otherwise he was found entitled for the same.”

10. Petitioner is behind the bars since 10.09.2015 and though he has been declined the concession of bail due to the reason that repeater has been recovered from him but there is nothing on record that it was the same gun which was used in the commission of the offence. Co-accused Muhammad Nawaz, Muhammad Akram and Ashiq have been granted bail by this Court. In this view of the matter, the facts and circumstances discussed above make the case of petitioner one of further inquiry. In such cases grant of bail is rule, while refusal is an exception.

11. For the reasons stated above, petitioner is admitted to bail, subject to his furnishing bail/surety bonds in the sum of Rs.100,000/- (rupees one lac) with one surety in the like amount to the satisfaction of the learned trial Court.

(HABIB ULLAH AMIR)
JUDGE

Approved for reporting

JUDGE