

1999 P Cr. L J 1677

[Peshawar]

Before Sardar Muhammad Raza Khan, J

BABAR KHAN and another---Petitioners

Versus

THE STATE and another---Respondents

Criminal Miscellaneous No.366 of 1998, decided on 27thNovember, 1998.

Criminal Procedure Code (V of 1898)---

---S. 497---Penal Code (XLV of 1860), Ss.337-A(ii) & 337-F(iv)/34---Bail, grant of---Occurrence was supported by injured victim, witnesses as well as medical report which had shown that female victim was injured at the skull with sharp-edged weapon by accused---Skull is a very delicate part of body and injury had gone bone deep---Had it been with a slightly more force, it would have smashed brain of the victim---Accused, in circumstances, could not be shown leniency towards bail---Since blow of co-accused had not landed do vital part of body of victim, he was entitled to concession of bail---Bail application of accused was rejected whereas that of co-accused was accepted and he was ordered to be released on bail.

Shafiqur Rehman for Petitioners.

A.A. -G. for the State.

Khalid Rehman Qureshi for the Complainant.

Date of hearing: 27thNovember, 1998.

JUDGMENT

This is a bail application filed by Babar Khan and Zahooruddin alias Kala of village Changhala, Haripur who were arrested for causing axe blows to Mst. Khalida Bibi wife of Said Rasan, a co-villager, the report whereof was registered at serial No.396, dated 14-9-1998 of Police Station Saddar Haripur under sections 337-A(ii) and 337-F(iv)/34, P.P.C.

2. They were refused bail by the Courts below while Babar Khan, due to his appearance in the Matriculation examination was released on interim bail by this Court on 30-10-1998.

3. Mst. Khalida Bibi complainant had some dispute concerning contiguity with her co-villager Haider Zaman. On 14-9-1998 at about 3-00 p.m. Haider Zaman put a cement slate at the back of his house which place was claimed by the lady as her ownership. She prohibited Haider Zaman whereupon his sons Zahooruddin alias Kala and Babar Khan appeared on the scene armed with axes. Kala gave axe blow on the right forearm closed to wrist which was bone deep while Babar Khan gave her an axe blow over left side of skull which was also bone deep.

4. The occurrence is supported by the injured victim the witnesses as well as the medical report which shows that the lady was injured at the skull with sharp-edged weapon by Babar Khan accused, It was a very delicate part of the body and the injury had gone bone deep. Had it been with a slightly more force, it would have smashed the brain. The petitioner Babar Khan should not be shown leniency towards bail.

5. Learned counsel for the petitioners stated that the report in hand was a counter-blast to their report before the police which was prior in time and recorded at serial No.24 of the daily diary placed at page 13 of the file. A perusal of such report indicates that Haider Zaman apprehended danger at the hand of the present complainant party and wanted to preventive measures to be taken against. It does not appeal to reason that to reduce the effect of a nominal allegation the lady would sustain injuries on her person, much less an injury on the skull.

6. So far as Zahooruddin alias Kala accused is concern his blow had not landed on the vital part of the body and hence he is entitled to the concession of bail. The application of; Babar Khan petitioner is rejected and he is taken into custody with direction to be produced before the Ilaqa Magistrate on 1-12-1998 while Zhooruddin alias kala is directed to be released on bail provided he furnishes a bond in sum of Rs,80,000 with two sureties each in the like amount to the satisfaction of Ilaqa Magistrate.

H.B.T./232/P

Order accordingly.