

1982 P Cr. L J 49

[Peshawar]

Before Abdul Khaliq Khan, J

ASHIQ HUSSAIN-Petitioner

Versus

THE STATE-Respondent

Criminal Miscellaneous No. 138 of 1981, decided on 23rd September, 1981.

Criminal Procedure Code (V of 1898)---

--- S. 497-Bail, grant of-[Murder-case]-Versions given by parties in cross-cases as well as other material on record silent regarding their own part in incident resulting in death of one person on one side and injuries to accused-petitioner on other side-Both parties condemning each other to have aggressed upon it and evidence as to how whole affair started and which side responsible for starting aggression yet to be adduced at trial-Held : A fit case for further enquiry as envisaged by S. 497 (2), Cr. P. C.-Bail allowed, in circumstances.

Khalid Rehman Khan Qureshi for Petitioner.

Abdul Khaliq Khan for the State.

Date of hearing : 23rd September, 1981.

JUDGMENT

Ashiq Hussain has moved an application under sections 497/498 Cr. P. C. for admitting him to bail till the conclusion of trial in case F. I. It. No. 281, dated 25th June, 1981 under section 302/34, P.P.C. on the ground that there are two versions of the incident and as he was also subjected to violence and as further enquiry is needed to fix responsibility for aggression.

2. The facts relevant for the disposal of the bail matter are ; that case under section 302/34, P. P. C. was registered against the petitioner and three others on the report of Chanzeb. It was alleged that the other day at 'digerwela' his brother had gone to their land known as 'Dadogori'. After sometime, the informant alongwith 'his other brother Aurangzeb also proceeded for the same land. When they reached near, they found Mian Noon Mohammad, Mian Noor Bakhsh and Maqbool-urRehman sons of Ibrahim having caught hold of Javaid, while Ashiq Hussain, the petitioner was giving him dagger blows. No sooner the accused saw them, they decamped. When

they approached Javaid, the) found him dead. 3. Ashiq Hussain, the accused mentioned above, got recorded his report in the same Police Station vide F.I.R. No. 287. wherein he charged Chanzeb. Javaid. Qalandar and Aurangzeb for assault. Javaid was reported to have caught-hold of him, while Chanzeb gave him choori blows. Javaid, Aurangzeb and Qalandar were stated to have fired in the air and to have given him beating.

4. It is evident from the reading of the two F. I. Rs. and the other material placed on the file that the parties are completely silent with regard to their own part in the incident which resulted in the death of Javaid deceased and injuries sustained by the petitioner. There are two cross-version; i.e. one by the complainant-party and other by the accusedparty Chanzeb, the informant in the instant case, according to his own version arrived at the scene of occurrence when already the assault on the deceased was in progress. Therefore, it would require other evidence as to how the whole affair started. In other words, further enquiry is needed to determine who is the aggressor, as presently both the parties have condemned the others to have aggressed upon them. Probability of the counter-versions having also some truth being there, it requires further enquiry to fasten responsibility for starting the aggression.

5. In consequence I hold that it is a fit case for further enquiry as envisaged by section 497(2), hence petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 20.000 (Rupees twenty thousand only) with two sureties in the like amount to the satisfaction of Illaqa Duty Magistrate. Abbottabad.

Bail allowed