

IN THE COURT OF ADIL ZEB KHAN
ADDITIONAL SESSIONS JUDGE, MARDAN AT KATLANG

Petition No. 270/BA of 2024

Shams ul Islam versus State

Order—07
18.07.2024

1. Altaf Ahmad APP for the State present. Accused/petitioner through his counsel Shah Nawaz Khan, advocate present. Complainant through his counsel Aftab Alam, advocate present.
2. Accused/petitioner Shams ul Islam son of Noor Muhammad resident of Dheri Likpani, Tehsil Katlang, District Mardan is seeking his post-arrest bail in case FIR No. 197 dated 20.04.2024 under section 302/109/114/200/201/34 PPC/15AA of police station Baizai, Mardan.
3. Arguments heard. Record perused.
4. Fact forming matrix of the instant FIR are that accused/petitioner Shams ul Islam (then complainant) reported the matter to local police to the effect that on the eventful night, he along with his brother Sana Ullah (deceased) were present in the house; in the meanwhile, someone knocked the door of the house whereupon the deceased proceeded outside; as soon as he opened the door, some unknown person fired at the deceased due to which he was hit and sustained injuries; the deceased later on succumbed to his injuries; on 25.06.2024 the son of deceased namely Arsh Ullah recorded his statement under section 164 Cr.P.C. wherein he charged co-accused Ameen Ullah, Atta Ullah and Zia Ullah for committing the murder of his father at the instigation and abetment of accused/petitioner.

5. After hearing all the sides and perusal of record this court is of considered opinion that although the accused/petitioner is not charged in the FIR as initially he was complainant in the instant case however on 25.06.2024 son of the deceased namely Arsh Ullah charged the accused/petitioner in his statement recorded under section 164 Cr.P.C. but perusal of said statement shows that the same was recorded with the delay of more than two months and from this angle, deliberation and concoction could not be ruled out and hence pushes the case towards further inquiry.
6. Moreover, the son of the deceased charged the accused/petitioner in his statement under section 164 Cr.P.C. on the basis of his satisfaction and information but has not disclosed his source of information and satisfaction which further slides the case towards further inquiry.
7. Similarly in his statement u/s 164 Cr.P.C. the Arsh Ullah has charged the accused/petitioner for abetting the offence but there is nothing on the file that when and where the said conspiracy was hatched and same is still a wild goose chase for the investigation agency regarding orchestrating the said conspiracy by the accused/petitioner as there is nothing on the file which further pushes the case towards further inquiry.
8. Moreover, the offence is nocturnal one and no source of light has either mentioned in the FIR nor in the site plan while from the statement of son of the deceased under section 164 Cr.P.C. and other allied documents the occurrence is unwitnessed one which further leans towards further inquiry.
9. During the course of arguments, the learned counsel for the complainant side give much stress on the recovery of the weapon of offence i.e. 30 bore pistol from the possession and pointation of the accused/petitioner. It is pertinent to mention here that this court

issued various notices to the I.O./SHO to submit FSL report regarding matching of the crime empty with the pistol recovered from the possession and pointation of the accused/petitioner but the local police turned deaf ear to the directions of this court however the said FSL report, if even received, will be of no help to the prosecution as the local police recovered one crime empty of **223 bore** from the spot while from the possession of the accused/petitioner, a 30 bore pistol has been recovered whose bore will in no way match with **223 bore** and this aspect further tilts the case towards further inquiry.

10. The accused/petitioner has not confessed his guilt nor he is required anymore to the local police for the purpose of investigation.
11. Above observations are based on tentative assessment of material available on record of the case, which shall not influence the mind of learned trial court in any manner at the time of trial.
12. Hence, keeping in view my aforesaid discussion in mind, the bail application stands accepted and accused/petitioner is admitted to bail provided he furnishes bail bonds in sum of Rs. 200,000/- with two sureties each in the like amount to the satisfaction of learned Judicial Magistrate concerned/MOD. Sureties must be local, reliable, and men of means. Copy of this order be placed on judicial and police file. Requisitioned record returned to the quarter concerned and file of this court be consigned to record room after completion and compilation.

Announced
18.07.2024

(Adil Zeb Khan)
Additional Sessions Judge,
Mardan at Katlang