

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr. Misc. (B.A) No. 568-M/2024

Date of hearing: **08.10.2024**

PETITIONER(S) **(Mst. Shahira Bibi)**
By Mr. Hazrat Rahman, Advocate

RESPONDENTS: **(State)**
By Mr. Rahimullah Chitrali, Assistant A.G.

(Mst. Baacha Anwar)
By Muhammad Riaz Muhammadzai,
Advocate.

ORDER

MUHAMMAD NAEEM ANWAR, J.- Petitioner Mst. Shahira Bibi, who is involved in case FIR No. 82 dated 30.05.2024 under sections 302 PPC read with Section 15 of the Khyber Pakhtunkhwa Arms Act 2013, registered at P.S Barawal, District Dir Upper, has approached this Court through instant petition for her post arrest bail. She was refused bail by learned lower forum vide order dated 11.09.2024.

2. The petitioner reported the matter herself on 29.05.2024 at 11:40 PM, in the presence of her son, Sana Ullah, upon the arrival of local police at her residence. She explained that her husband and her other son, Masih Ullah, were currently abroad in Saudi Arabia. On that night, while she and other family members were asleep, she was awakened by

the sound of a pot clattering. She noticed that a stranger had entered her home. Upon her call, the intruder fled and attempted to scale the wall to escape during which she fired at him with 12 bore shotgun in exercise of her right of self-defence. The stranger got hit and fell from the wall outside her home. He was later identified as Tafseer Ullah son of Umar Wahid hailing from Dog Dara currently living at village Balokar, Barawal.

3. The central argument presented by the learned counsel for the petitioner is that the petitioner, from the very outset, has taken the plea of acting in self-defense, a position supported by the surrounding circumstances of the incident especially the time of occurrence and the fact that petitioner was living with her children while her husband and a son were abroad. He placed reliance on various reported judgments of the Hon'ble Supreme Court and High Courts in support of his plea for bail of the petitioner mainly on the ground of the aforementioned plea.

4. Contrarily, the learned counsel for the complainant contends that the petitioner has effectively admitted her guilt, not only in her initial report to the police but also in her confessional statement made before the Judicial Magistrate. He

maintained that this admission is further corroborated by the recovery of the deceased's body from a field near the petitioner's home, along with additional supporting evidence in the form of incriminating recoveries. He further contended that the plea of self-defence taken by the petitioner cannot be considered at bail stage particularly when the accused is involved in commission of a heinous offence and the trial Court will better address the matter. He was also of the view that confession of the petitioner is afterthought, therefore, the same is of no help to her at this stage. He placed reliance on **"Liaqat Ali Vs. The State" (2000 SCMR 1438)**, **"Shams Ur Rahman Vs. The State and 04 others" (2018 PCr.LJ Note 177)**, **"Waqar alias Bhoora Vs. The State" (2020 YLR Note 156)**, **"Dr. Maqbool Ahmad Jauhar Vs. The State" (1976 PCr.LJ 333)** and **"Gulzar Akhtar alias Bholu Vs. The State" (2001 YLR 1934)**.

5. I have heard the arguments of the learned counsel for petitioner, complainant and learned Assistant Advocate General and perused the record.

6. The main issue in this case is whether the petitioner acted in self-defence, or she unlawfully committed the murder of the deceased, rendering her defense invalid. This complicity requires tentative but

thorough examination of all relevant aspects of the case. However, such an in-depth analysis is not permissible or required at this stage. Before this Court, the matter at hand is a bail application filed by the petitioner. A crucial consideration in this context is whether the plea of self-defence can be considered at the bail stage or not? To answer this question, it would be appropriate to give a summary of the law on the subject and thereafter to analyze cursorily the evidence on record for arriving at a just conclusion for the purpose of deciding this application.

7. The most debated question in the present case is the right of private defense, a principle which allows individuals to use reasonable force to defend themselves, their family, or their property against unlawful aggression. It is a fundamental principle recognized across various legal systems, aimed at allowing individuals to protect their interests when state intervention is not immediately available. This principle is primarily governed under Chapter IV of the Pakistan Penal Code, 1860 pertaining to General Exceptions. According to Section 96 nothing is an offense which is done in the exercise of the right of private defense. Likewise, Section 97 elaborates on the right to private defense of the body and of property according to which a person is justified in

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using reasonable force to protect himself or another from an unlawful attack in cases of imminent threats, secondly, a person may defend his property against theft or destruction. Another provision is Section 100, PPC which specifically addresses the right to cause death or grievous hurt in certain situations of assaults when there is apprehension of death, grievous hurt, rape, gratification of unnatural lust, kidnapping or abduction or wrongful confinement in a situation when the victim is unable to have recourse to the public authorities for his release. It permits a person to inflict harm in self-defence when there is a threat of death, serious injury, or an assault that could result in such outcomes while Section 101 states that if a person uses force in self-defense and the force is not intended to cause death or grievous harm, he will not be held liable for causing death. The right so granted under Sections 97 and 100 is, however, subject to certain restrictions mentioned in Section 99, PPC. The last relevant provision is Section 102 PPC which clarifies that the right of private defense is available if the attack is ongoing or imminent.

8. The record indicates that the incident occurred late at night, around 11:00 PM. According to the petitioner's confession, the local police arrived at the scene based on her report, where they found

the deceased in injured condition outside the boundary wall of her house. Statements u/s 164, Cr.P.C. of Mst. Bacha Anwar, the mother of the deceased, along with other documentary evidence, appear to support the petitioner's account in the FIR with regard to the place of occurrence. Additionally, the petitioner presented the shotgun to the police, which had been used in the incident, and a spent cartridge from the same weapon was recovered from her house. The police also took possession of a loaded pistol, allegedly belonging to the deceased, which was presented by the petitioner's son. Notably, there is currently no evidence suggesting any relationship between the deceased and the petitioner, nor is there any justification provided for the deceased's presence at the crime scene at odd hours especially when her husband is abroad. Considering these circumstances, the petitioner's claim of having acted in self-defence appears reasonable and can be considered at this stage in support of her prayer for bail. The Hon'ble Supreme Court, in the case of **"Zaigham Ashraf Vs. The State and others"** **(2016 SCMR 18)**, noted that while granting or refusing to grant bail to an accused person, the Court is not required to see and consider the material/evidence collected in favour of the prosecution but also had to give proper attention to


the defence plea taken by accused person. In another case titled **“Muhammad Hussain Vs. Muhammad Siddique and another” (1987 SCMR 861)** it was held that the contention raised that plea of self-defence could not be given effect at the time of considering the question of bail, held, not tenable in circumstances. Similarly, in **“Hayat Ullah Vs. Lal Badshah and another” (PLD 2009 Peshawar 28)**, this Court held that deep appreciation of evidence and drawing conclusions therefrom though was not warranted, but tentative assessment of materials brought on record, including the defence plea was a permissible course. This perspective is reflected in **“Muhammad Siddique Vs. The State” (PLD 1994 Lahore 129)**, that defense plea, if any, can be considered for the purpose of grant or otherwise of bail. Furthermore, in **“Abrar Ahmed Siddiqi Vs. The State” (2022 P Cr. L J 995 Sindh)**, it was emphasized that in order to form a tentative opinion as to whether or not the accused was prima facie connected with the commission of the offence, the Court was not precluded from tentatively assessing the evidence of the eye-witnesses, the witnesses of the recovery, the medical reports, cross-versions, other connecting evidence and the plea of defence, if any. In light of these consistent rulings from the superior courts, the defence raised by the petitioner

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can be appropriately considered at this bail stage. Consequently, the circumstances warrant careful consideration of the petitioner's plea as part of the overall assessment of her bail application.

9. The SHO has forwarded a final report with the request for trial of the petitioner on the evidence collected during investigation but on the other hand the petitioner has taken the same evidence in her defence. Whether she had exceeded her right of private defence, this question will be decided by the trial Court after examination of the prosecution witnesses. At this stage, the case of petitioner, in view of her explicit defence plea, requires further probe into her guilt and she is entitled to the concession of bail more particularly when she is a female accused and the law has extended some concessions to her in this regard. The first proviso to section 497(1), Cr.P.C. provides that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail. While explaining the object of the above proviso, the Hon'ble Supreme Court held in the case of "**Tahira Batool Vs. The State and another**" (PLD 2022 S.C 764) that the term "such an offence" used in this proviso refers to the offence mentioned in the second part (prohibitory clause) of section 497(1), Cr.P.C.

Further held that in cases of women, etc., as mentioned in the first proviso to Section 497(1) Cr.P.C., irrespective of the category of the offences, bail is to be granted as a rule and refused in as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1), Cr.P.C. As regards refusal of bail to female accused in exceptional circumstances, the apex Court in the same judgment held that the well settled exceptions are when there is likelihood that the accused (a) will abscond to escape the trial (b) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the Course of justice or (c) to repeat the offence keeping in view his criminal record. Considering the attending circumstances of the present case, there is no likelihood that the petitioner will abscond, or she will tamper with the prosecution evidence or influence the witnesses nor she bears any criminal history to strengthen the apprehension with regard to the repetition of the same offence by her. Thus, on this ground too, she is entitled to the concession of bail.

 **10.** The case law produced by learned counsel for the complainant cannot be taken into consideration for refusal of bail to petitioner because

the facts mentioned in the referred cases are distinguishing from the facts of the present case.

11. Considering the above discussion, this bail application is allowed, and the petitioner is directed to be released on bail subject to her furnishing bail bonds in the sum of Rs.400,000/- (four hundred thousand) with two sureties each in the like amount to satisfaction of the area Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

12. Above are the reasons for my short order of the even date.

Announced.
Dt:08.10.2024.


JUDGE