

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. Crl. Misc. No.43092-B/2024

Zulqarnain vs The State etc.

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
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24.10.2024 Mr. Aftab Hussain Bhatti, Advocate for Zulqarnain (petitioner in Crl. Misc. No.43092-B/2024).

Mr. Naeem Ijaz Insari, Advocate for Muhammad Rafique (petitioner in Crl. Misc. No.62505-B/2024).

Mr. Nisar Ahmad Virk, Deputy Prosecutor General for the State along with Khizar, S.I. and record of the case.

Ch. Muhammad Atif Saeed, Advocate for the complainant.

This single order will dispose of two petitions for post arrest bail i.e. Crl. Misc. No.43092-B/2024 filed by Zulqarnain (petitioner) and Crl. Misc. No.62505-B/2024 filed by Muhammad Rafique (petitioner) as both these petitions have been filed in case arising out of F.I.R. No.361/2024 dated: 10.04.2024 registered under Sections: 302, 109, 34 PPC (offence under Section: 109 PPC was though deleted during investigation however same was again added) at Police Station: Dijkot, District Faisalabad.

2. After hearing learned counsel for the parties, learned Deputy Prosecutor General and going through the available record with their able assistance, it has been noticed that briefly, as per Crime Report (FIR) got recorded by Sharafat Ali (complainant), Muhammad Rafique (now petitioner in Crl. Misc. No.62505-B/2024) armed with pistol while making firing raised *lalkara*, Arbab gave blow with butt of pistol at forehead of Muhammad Usman (son of the complainant, now deceased of the case), then Muhammad Rafique armed with pistol .9mm gave butt blow of pistol at nose of Muhammad Usman, Zulqarnain (now petitioner in Crl. Misc. No.43092-B/2024) gave blow with butt of pistol at forehead of Muhammad Usman; meanwhile Muzammil Hussain fired shot with pistol .30-bore which hit at front of chest of Muhammad Usman at left side and went through and through who fell on the ground; accused persons fled away while issuing threats and making firing.

So, as per crime report (FIR), Muhammad Rafique was armed with pistol, he fired shot, raised *lalkara* and also gave blow with butt of pistol at nose of Muhammad Usman (now deceased of the case) whereas Zulqarnain gave blow with butt of pistol at forehead of Muhammad Usman, however, on Court's query, learned Deputy Prosecutor General under instructions of police official (present in Court) and after himself going through the available record apprises that second investigation of the case was entrusted to Deputy Superintendent of Police, Headquarters, Police Line Faisalabad, who after thorough investigation *vide* case diary No. 50 dated: 07.10.2024 concluded that Muzammil Hussain (co-accused) made firing and fired straight shot at Muhammad Usman, which hit at front chest and went through and through, who (Muhammad Usman) after receiving said fire shot ran a little towards his house but after covering short distance fell at metalled road on his face (من کے بل پختہ سڑک پر)، due to which he received injuries at his mouth, forehead and nose (جس سے منہ پیشان ناک پر نیگلوں نشات پڑے) and it was not mentioned therein that Muhammad Rafique or Zulqarnain caused injuries to Muhammad Usman by giving blows with butt of pistol. This is not out of place to mention here that as per postmortem examination report of the deceased, injury on Nasal Bridge is "Abrasion 1x1cm" whereas at forehead above left eye brow is also "Abrasion 3x1cm", which are not cause of death. It has been also noticed that as per crime report (FIR), Arbab (co-accused) was also ascribed the role of giving blow with butt of pistol at forehead of Muhammad Usman; meaning thereby that as per FIR, two blows were given at the forehead of Muhammad Usman i.e. one by Arbab and other by Zulqarnain however as per copy of postmortem examination report (available on the record), there is only one injury at forehead of Muhammad Usman (deceased of the case) as mentioned above. Learned Deputy Prosecutor General further apprises that subsequently complainant got recorded his supplementary statement while mentioning therein that Arbab gave blow with butt of pistol at left knee of Muhammad Usman (now deceased of the case). Though as per FIR Muhamad Rafique also made firing yet any empty of .9mm pistol was not found at the place of occurrence by the Investigating Officer; allegation of raising *lalkara* has been levelled against Muhammad Rafique however it is relevant to mention

here that when as per own case of prosecution, Muhammad Rafique was himself armed with .9mm pistol and also made firing, then what was the hindrance in his way to fire shot straight at Muhammad Usman and himself kill him, is a mystery/question mark and in said state of affairs, whether *lalkara* allegedly raised by Muhammad Rafique was “commanding” or mere “proverbial” in nature would be determined during trial of the case. It has also been apprised by learned Deputy Prosecutor General that after thorough investigation carried out by Deputy Superintendent of Police, Headquarters, Police Line Faisalabad, it has been concluded by him that Zulqarnain was neither equipped with any weapon nor caused any injury to deceased or anybody else in the case rather he was present at the place of occurrence empty handed and did not perform any role in the occurrence. Since any empty of .9mm pistol was not found at the spot and any report regarding matching of any empty of .30-bore pistol secured from the spot with pistol allegedly recovered from Zulqarnain is not available on the record as apprised by learned Deputy Prosecutor General therefore evidentiary value of recovery of pistol .9mm from Muhammad Rafique and pistol .30-bore from Zulqarnain would also be determined during trial. Aforementioned supplementary statement of complainant also requires evidential verification during trial. It is also relevant to mention here that Arbab (co-accused, mentioned above) has already been granted post arrest bail in the case *vide* order dated: 09.07.2024 (copy available on the record) passed by learned Additional Sessions Judge, Faisalabad, which order is still holding the field and has neither been challenged by the prosecution nor by the State as confirmed by learned Deputy Prosecutor General as well as by learned counsel for the complainant. When all aforementioned factors are taken into consideration in totality, then question of sharing common intention as well as vicarious liability to the extent of present petitioners i.e. Muhammad Rafique and Zulqarnain would be seen during trial of the case, however, case of prosecution, at present, against both petitioners requires further probe/inquiry within the purview of sub-section 2 of Section: 497 Cr.P.C. Both petitioners were arrested in the case on 12.04.2024, sent to jail on 25.04.2024 where they are confined till now. Mere detention of the petitioners in lock-up, in aforementioned

circumstances, would serve no useful purpose to the case of prosecution. Bail cannot be withheld as advance punishment.

Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail; in this regard, case of "**CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU through P.G., NAB versus NISAR AHMED PATHAN and others**" (**PLD 2022 Supreme Court 475**) can be advantageously referred and its relevant portion from Page No(s).480-481 is reproduced: -

"To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial."

3. In view of above, both petitions for grant of post arrest bail bearing Crl. Misc. No.43092-B/2024 filed by Zulqarnain (petitioner) and Crl. Misc. No.62505-B/2024 filed by Muhammad Rafique (petitioner) are accepted/allowed and they are admitted to bail in the case subject to their furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five hundred thousand only) each with two sureties each in the like amount to the satisfaction of trial court.

4. It goes without saying that observations mentioned above are just tentative in nature, strictly confined to the disposal of instant bail petitions and will have no bearing upon trial of the case, which would be concluded by the trial court expeditiously and preferably within a period of four months after receipt of attested copy of this order. Needless to add that if petitioners or anybody else acting on their behalf will create any hurdle in the way of conclusion of trial as directed above, then complainant as well as State would be at liberty to move for recalling of this order.

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Farooq Haider)
Judge