

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 Jabbar Ahmad (complainant), on 30.07.2023 at about 1:15 p.m., Muhammad Abbas, Muhammad Nawaz and Muhammad Ashfaq (present petitioner) while armed came, entered into the house, Muhammad Ashfaq (present petitioner) locked the room where complainant and other witnesses were present, Muhammad Nawaz and Muhammad Ashfaq (present petitioner) took Naveed Akhtar (brother of the complainant) into clasp (برادرم کو چپھا مارا), Muhammad Nawaz raised lalkara upon which Muhammad Abbas fired shots at both legs of Naveed Akhtar, who while becoming injured fell down, Muhammad Ashfaq (present petitioner) raised lalkara upon which Muhammad Abbas fired shots at both arms of Naveed Akhtar, Muhammad Nawaz further asked Muhammad Abbas for finishing him upon which Muhammad Abbas fired successive shots, one fire shot went through and through from chest, accused persons fled away while uttering abuses, raising

lalkara and brandishing weapons, Naveed Akhtar succumbed to the injuries on the way to hospital, this occurrence took place on the abetment and consultation of Abdul Razzaq and Muhammad Zubair. Admittedly petitioner neither caused any injury to Naveed Akhtar (now deceased of the case) nor to anybody else in this case, rather allegation of closing door of the room where complainant and other witnesses were present, raising lalkara as well as taking deceased into clasp has been levelled against him. So far as lalkara is concerned, either it was proverbial or commanding would be seen during trial. As far as allegation of taking Naveed Akhtar (now deceased of the case) into clasp (جپہا) by the present petitioner is concerned, suffice it to say that when it is own case of prosecution that both arms as well as legs and chest were hit with shots fired by firearm weapon then taking into clasp the victim while exposing himself to the risk of being hit by doing so itself requires further probe/inquiry and in this regard guidance has been sought from the case of **“Ghulam Hyder versus The State” (2021 SCMR 1802)** whereas case of **“Jamil Khan versus The State and another” (2005 PCr.LJ 2003)** can also be advantageously referred on the subject. On Court’s query, learned Deputy Prosecutor General under instructions of police official (present before the Court) and after himself going through available record submits that any offence regarding confinement of complainant or other witnesses into the room has not been added in this case till now and while referring to case diary No.17 dated 15.09.2023 appries that after thorough investigation it has been concluded by the investigating agency that petitioner was not equipped with any weapon at the time of occurrence rather he came, entered into the place of occurrence empty handed and was present at the place of occurrence when Muhammad Abbas (co-accused) committed the occurrence while making firing from his pistol; further appries that Muhammad Nawaz against whom similar role of raising lalkara as well as clasping Naveed Akhtar (now deceased of the case) was alleged has been declared innocent during investigation of the case and similar is the

position of accused of abetment namely Abdul Razzaq and Zubair who have also been found innocent during investigation of the case; also adds that nothing has been recovered from the present petitioner.

When all the aforementioned factors are taken into consideration in totality then case of the prosecution against the petitioner, at present, requires further probe/inquiry and falls within the purview of sub-Section (2) of Section: 497 Cr.P.C. Petitioner was arrested in the case on 10.09.2023 and sent to jail on 18.09.2023 where he is confined till now. Mere detention of the petitioner in the lockup would not serve any useful purpose to the case of prosecution. Bail cannot be withheld as advance punishment.

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 what has been discussed above, instant petition filed by Muhammad Ashfaq (petitioner) for grant of post arrest bail is **allowed** and he is admitted to bail in the case subject to his furnishing bail bonds in the sum of Rs.300,000/- (Rupees three hundred thousand only) 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 petition and will have no bearing upon trial of the

case, which will be concluded by the trial court expeditiously. Needless to add that if petitioner or anybody else acting on his behalf will create any hurdle in the way of conclusion of trial, then complainant as well as the State would be at liberty to move for recalling of this order.

(Farooq Haider)
Judge

APPROVED FOR REPORTING.

(Farooq Haider)
Judge

This order has been dictated,
pronounced, prepared and
signed on 08.04.2024.

**Jftikhar*