

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE JAWWAD S. KHAWAJA, HCJ  
MR. JUSTICE DOST MUHAMMAD KHAN  
MR. JUSTICE QAZI FAEZ ISA**

**Criminal Petition No.488 of 2015**

*(Against the order dated 5.6.2015 of  
the Lahore High Court, Lahore passed  
in Crl. Misc. No.5654-B of 2015)*

Zaigham Ashraf

... Petitioner(s)

**Versus**

The State, etc.

... Respondent(s)

For the petitioner(s): Ms. Bushra Qamar, ASC  
Syed Rafaqat Hussain Shah, AOR

For the State: Ch. Zubair Ahmed Farooq, Addl. PG  
Mr. M. Hanif, SI, P.S. Malakwal.

For the complainant: Rai Muhammad Nawaz Kharal, ASC

Date of hearing: 19.8.2015

**JUDGMENT**

**Dost Muhammad Khan, J.-.** The petitioner, Zaigham Ashraf, is seeking leave against the order of the learned Judge in Chamber of the Lahore High Court, Lahore, refusing him grant of bail in Crime No.98 dated 11.03.2014, registered for offences u/Ss.302, 324, 148, 149 and sections 337-F(iii), 120-B and 109 PPC, by PS Malakwal, District Mandi Bahauddin.

2. Mst. Kiran Tanveer w/o Faiz Miran, while reporting the crime alleged that, deceased Mst. Ambreen, her younger sister, was married to Shahid Imran. The couple was blessed with three male children. The husband of the deceased died on 20.10.2012, however,

in his lifetime he had transferred bungalow No.D-5, Block-408, in Defence, Lahore, another under-construction house at Gojra and seven acres of land to Mst. Ambreen, which caused serious annoyance to the accused party. After the death of her husband, the deceased and her children were ousted from the house by the accused, who also forcibly occupied the above properties, besides, misappropriating dowry articles and gold ornaments of the deceased. To that effect a civil suit was filed by the deceased which was pending disposal in the Civil Court, at Malakwal.

3. After attending the hearing of the case, on 11.03.2014, the complainant along with the deceased, followed by the two witnesses on motorbike, left for home, however, they were intercepted by the accused, namely, (i) Muhammad Ashraf (ii) Kamran Ashraf (iii) Fakhar Ashraf (iv) Imran Ashraf (v) Zaigham Ashraf (petitioner) (vi) Mudassar @ Kalu and three unknown persons, who were duly armed with Kalashnikov rifles. Accused Kamran Ashraf, Fakhar Ashraf and Zaigham Ashraf made rapid firing with their Kalashnikov rifles at Mst. Ambreen who got injured and died, while with the fire shots of Mudassar @ Kalu, Khurram Ashraf and Fakhar Ashraf, Altaf Hussain (PW) was hit and got injured. The present petitioner also effectively fired at Altaf, hitting him on his knee-joint, whereafter all the accused fled away. The injured, Altaf Hussain, also succumbed to the injuries later.

We have heard the learned ASC for the petitioner, learned Additional P.G. for the State as well as the learned ASC for the complainant and have perused the record.

4. During the course of investigation, the Investigating Officer discovered that the present petitioner Zaigham Ashraf, was lodged in Abbottabad Prison of KPK in crimes under Articles 3 and 4 of the

Prohibition (Enforcement of Hadd) Order, 1979, PS Cantt., Abbottabad and he was in the Prison on the date and time of the present tragedy and that, he was released from the Prison on 13.03.2014. The Investigating Officer, therefore, verified the record of the Prison and made inquiries from the Prison authorities, as a result he charged the present petitioner for crimes u/Ss. 109 and 120-B PPC for the abetment of the crime and hatching conspiracy with the co-accused to commit the crime.

5. At the conclusion of the investigation, the charge sheet, filed in the Trial Court contained S.109 and 120-B PPC and in this way the Prosecution itself has relied upon the plea of *alibi* of the petitioner and he has been implicated for abetment of the crime and offence of conspiracy, contradicting the stance of the complainant that the petitioner was present on the spot and participated in the crime.

6. There is no hard and fast rule that plea of *alibi* shall not be considered at bail stage because while granting or refusing to grant bail to an accused person, the Court is not required to see and consider the materials/evidence, collected in favour of the Prosecution but also to give proper attention to the defence plea, taken by an accused person.

7. In the case of **Khalid Javed Gillan v. The State (PLD 1978 SC 256)**, broader principles were laid down with regard to accepting the plea of *alibi* of accused in that case, making tentative assessment of the materials brought on record and it was held as follows: -

*“S.497— Bail— Assessment of evidence—Court, in matters of bail, to go by its assessment of “the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case— Prosecution though may prove a*

*prosecution witness to be man of unimpeachable character for purpose of bail, however, hostile relationship between parties circumstances not irrelevant to Court's assessment of material produced before it—Petitioner's plea of alibi supported by affidavit of a disinterested person, a medical practitioner of high repute, not having any ostensible connection with petitioner—Bail absence of proof of Doctor's evidence being not fit to be relied upon, held, could not be properly refused—Impugned order being based on misreading of S.497, petitioner ordered to be released on bail."*

When the bail is ordinarily granted to an accused person, who is charged for raising 'Lalkara' i.e. abetting the crime then, the case of the accused who is not present on the spot and is charged for abetment and conspiracy, is certainly placed on better pedestal for grant of bail in the absence of strong, cogent and tangible evidence/materials, collected by the Prosecution, during the course of investigation, connecting his neck with the crime in a reasonable manner. The record before us, on careful perusal, does not suggest any such evidence, having been brought on record. Therefore, the plea of *alibi* taken by the petitioner, is not only reasonably established at the moment but has also been acted upon and believed by the Prosecution and why he was charged for abetment u/Ss. 109 and 120-B PPC.

8. Similarly, in the case of **Tariq Bashir v. State (PLD 1995 SC 34)** it was held that: -

*"Grant or refusal of bail in cases punishable with death or imprisonment for life or for 10 years must be determined judiciously having regard to the facts and circumstances of each case...Provisions of S.497 CrI.P.C. are not punitive in nature as regards offences punishable with death , or imprisonment for life, imprisonment for ten years, as there is no concept of punishment before judgment in law."*

The words/phrase contained in section 497 Cr.P.C. '**reasonable grounds**' to believe is of high import and meaning, requiring the Prosecution to show to the Court of law that it is in possession of sufficient materials/evidence, constituting '**Reasonable grounds**' that accused has committed an offence falling within the prohibitory limb of section 497 Cr.P.C.

To the contrary, the accused's burden is not that much heavier like the Prosecution. He has only to show that the evidence/materials, collected by the Prosecution or/and the defence plea taken by him create reasonable doubts/suspicion in the Prosecution case and he is entitled to avail the benefit of it. True that Court of law is required to make only tentative assessment of materials, placed on record by the Prosecution and no definite opinion shall be formed, conducting a pre-trial inquiry or deeply appreciating the evidence on record because such exercise is not permissible at bail stage.

9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion *albeit* tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised by the Judges in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with capital punishment. The Courts are equally required to make

tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.

10. In the case of **Amir v. The State** (PLD 1972 SC 277) it was held that, "*for purposes of bail, law not to be stretched in favour of prosecution—Benefit of doubt, if any arising, must go to accused even on bail stage*". Similar view was taken in the case of **Manzoor v. The State** (PLD 1972 SC 81). These principles so laid down, are based on enunciation of law in interpreting the provision of section 497 Cr.P.C. and broader principle of justice. Till date, no departure or deviation has been made therefrom by this Court then, these are the principles of law and have binding effect and shall be construed as guiding principles by all the Courts in the matter of grant or refusal of bail.

11. In the instant case, as discussed above, the plea of *alibi* of the accused has not been disbelieved by the Prosecution rather it was accepted after due verification from the Prison Authorities and Record, and it was for this reason that the present petitioner was subsequently charged for crimes u/Ss. 109 and 120-B PPC. Thus, in this way, his presence from the crime spot at the time of commission of the present crime stands excluded.

Keeping in view the two conflicting versions; one given by the complainant in the FIR and the other by the Investigating Agency based on documentary evidence with regard to the plea of *alibi*, the case of the present petitioner has become certainly one of further inquiry, falling within the ambit of sub-section (2) of section 497 Cr.P.C., where grant of bail becomes the right of accused and it is not a grace or concession, to be given by the Court. In the absence of any exceptional ground or reason, denial of bail in such a case would amount to exercise a discretion in a manner, not warranted by law and principle of justice.

12. Accordingly, this petition is converted into appeal and is allowed and the petitioner is granted bail in the light of the terms of our short order of even date, which is reproduced below: -

*"The petitioner seeks bail in case FIR No.98 dated 11.3.2014, offence under Sections 302, 324, 148 and 149 PPC (Sections 337-F(iii), 120-B and 109 PPC were added later on), registered with P.S. Malakwal, District Mandi Bahauddin.*

*2. For reasons to be recorded, the petitioner is allowed bail on furnishing personal bail bonds in the sum of Rs.2,00,000/- with two sureties in the like amount to the satisfaction of the trial Court. The petition is converted into appeal and is allowed. The trial Court shall comply with the directions of the High Court in respect of early disposal of the case".*

**Note:** Needless to remark that the above assessment and observations, recorded by us are tentative in nature and the Trial Court has to decide the case of the petitioner on the basis of evidence, to be recorded at the trial.

Chief Justice

Judge

Judge

Islamabad, the  
19<sup>th</sup> August, 2015  
Nisar/'

'Approved for reporting'