

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 07/BC/2020.**

Ahmad Nadeem

***Versus***

Sharyar Iqbal, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2020.	Mr. Shuja Ullah Gondal and Mr. Qaiser Imam Ch., Advocates for petitioner. Ms. Ramsha Izhar, State Counsel. Mr. Qausain Faisal Mufti, Advocate for respondent No.1. Aslam, Inspector, P.S. Sabzi Mandi, Islamabad.

Through this Crl. Misc. petition, the petitioner has prayed for cancellation of pre-arrest bail granted to respondents No.1 vide order dated 30.11.2019, passed by learned Additional Sessions Judge (West), Islamabad, in case FIR No.264, dated 16.07.2019, U/S 302/109/34 PPC, P.S. Sabzi Mandi, Islamabad.

2. Brief facts referred in the instant criminal case lodged on the complaint of petitioner are that on 16.07.2019 at about 12:30 p.m. he alongwith his brother Faisal Nadeem were present on their Rent A Car office, situated in Rehman Plaza, I/10, Islamabad when Raja Bakhtiar alias Bakhti entered into office and extended threats and fired with .30 bore pistol upon Faisal Nadeem on his right side temple as a result of the said firing Faisal Nadeem succumbed to injuries on spot. The motive alleged in the FIR is the exchange of hot words between Faisal Nadeem deceased and Raja Bakhtiar.

3. Learned counsel for the petitioner contends that respondent No.1 is nominated accused in this case through supplementary statement recorded on the same

day i.e. 16.07.2019, whereby respondent No.1 has been assigned role of abetment which has been recorded by two witnesses namely Muhammad Hayat and Muhammad Saqlain, who are resident of the same vicinity and compelled to visit the house of respondent No.1 being *Jirga* to resolve the previous conflict; that both the witnesses Muhammad Hayat and Muhammad Saqlain have recorded their statements that respondent No.1 has extended threats to commit of murder of deceased and on the very next day deceased Faisal Nadeem was done to death on the command of respondent No.1 by his younger brothers namely Bakhtiar and Umar Yar; that order for grant of pre-arrest bail is silent qua any malafide which is necessary ingredient for passing of order under the law and further contends that respondent accused has joined the investigation and has taken the plea of *alibi* which is not substantiated from record nor by the I.O and as such the order impugned is perverse and illegal.

4. Conversely, learned counsel for respondent No.1 contends that very nomination of respondent No.1 in the murder case is an afterthought as the entire incident of murder of deceased reflects a specific role attributed to a single accused with one fire-arm injury and no other witness or accused has been seen which has been incorporated through the improvised statement whereby at the first instance, respondent No.1's second brother was nominated through supplementary statement and later on respondent No.1 was incorporated as accused in the main case on the artificial and self made two witnesses Muhammad Hayat and Muhammad Saqlain, who have

never been called, neither visited his house for the purpose of *Jirga* prior to such incident; that the statements of both witnesses seem to be hearsay and could be appreciated at the trial and as such no role of abetment is visible on record, therefore, in such situation malafide could not be ruled out; that respondent No.1 has not misused the concession of pre-arrest bail.

5. Learned State Counsel contends that I.O has completed the investigation and challan has been sent up for submission in the Court and principal accused is still at large.

6. Arguments heard, record perused.

7. Petitioner being complainant of case FIR No.264, dated 16.07.2019, U/S 302/109/34 PPC, P.S. Sabzi Mandi, Islamabad, has filed cancellation of pre-arrest bail granted to respondent No.1 vide order dated 30.11.2019, passed by learned Additional Sessions Judge, Islamabad. In order to consider the arguments of petitioner, I have gone through the contents of the FIR, whereby one Faisal Nadeem was done to death by a single fire-arm injury with .30 bore pistol by Bakhtiar accused who is absconder and younger brother of respondent No.1. The contents of FIR reflect that in the broad day light occurrence took place on 16.07.2019 at about 12:30 p.m. in the office of complainant and only Bakhtiar alias Bakhti committed the offence and no other element of involvement of other co-accused has been referred but subsequently complainant has nominated the second co-accused Umar Yar, the second brother of principal accused on the statement of prosecution witness Bilal, the second co-accused was

arrested by the police, who has been granted post-arrest bail by the Court of competent jurisdiction.

8. The complainant again attempted to improve his case through supplementary statement and nominated respondent No.1 and contends that two witnesses namely Muhammad Hayat and Muhammad Saqlain have recorded their statements and alleged that respondent has shown his intention to commit murder of deceased prior to the said incident when both these witnesses have gone to the house of respondent No.1 being *Jirga* for the settlement of the previous dispute.

9. Tentative assessment of record reflects that respondent No.1 has been nominated through supplementary statement to the extent of abetment in terms of Section 109 PPC, which requires instigation and engagement in conspiracy for doing of that act or illegal omission with intention and all these elements require deeper appreciation of evidence by the trial Court. As such all these factors have been appreciated by the learned Additional Sessions Judge (West), Islamabad and considered the same. Moreover, the law in terms of Section 497(5) Cr.P.C. has to be seen in the light of dictum laid down by superior court reported as **2017 SCMR 1944 (Dr. Muhammad Tariq Vs. The State and others), 2011 SCMR 1614 (Shahid Imran Vs. The State and others), PLD 1996 SC 241 (Syed Amanullah Shah Vs. The State and another), PLD 1995 SC 54 (Farid Ullah Vs. Muhammad Niaz and 5 others) and 2011 SCMR 710 (Nasir Khan Vs. Waseel Gul and another)**, wherein it was held that when respondent accused has not misused the

concession of bail, nor tempered with any evidence and he was not present at the scene of occurrence, the allegation/accusation of abetment/ instigation/conspiracy can very easily be set up when parties are inimically disposed as possibility of false implication of the opponent is very much there. In all these cases pre-arrest bail once granted has not been recalled. It is also settled law that to deprive a person from his freedom is most serious and it is judicially recognized that ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him, but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. Reliance is placed upon **2007 MLD 1279 [Lahore] (Muhammad Younis alias Macca Vs. The State).**

10. In order to cancel a pre-arrest bail in such type of cases, a definite conclusion is required to believe that reasonable grounds exist against the accused persons. It is also settled that principles for cancellation of bail are different which require valid proof of misuse of concession of bail, although involvement of present respondent through belated statement could only be considered at the time of recording of evidence especially when his role is of abetment, therefore, at this stage any observation passed by this Court might prejudice the trial, therefore, propriety demands that pre-arrest bail granted to respondent/accused should not be cancelled unless strong and exceptional circumstances exist.

11. In view of above, instant petition is not made out

on merit and the same is hereby ***dismissed***. The observations made hereinabove are tentative in nature and shall have no effect on the merit of the case.

(MOHSIN AKHTAR KAZANI)  
JUDGE

Zahid