

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 108-B of 2021

Waleed Arfaqat

Versus

The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	10.03.2021	Raja Gul Nawaz, Advocate for the petitioner. Mr. Jan Muhammad Khan, Advocate for the complainant. Mr. Fahad Ali, State Counsel. Petitioner in person. Fakhar Abbas, S.I.

Through the instant petition, the petitioner seeks bail before arrest in case F.I.R. No. 252/20, dated 28.11.2020, offences under section 302/324/148/149 P.P.C., registered at police station Nilore, Islamabad.

02. Brief allegations against the petitioner / accused are that he along with his co-accused while armed with weapons attacked upon the complainant party due to which Sohail Anjum, Junaid, Zaib and Aftaar received injuries. Subsequently one of the injured persons namely Aftaar succumbed to the injuries, hence the instant FIR.

03. Learned counsel for the petitioner contends that the instant FIR has been lodged against the present petitioner on the basis of malicious and ulterior motives to receive unlawful benefits; the indictments as ascribed to the petitioner are absolutely against the facts as well as all based on

some imbedded malafide on the part of Complainant's side may have been whispered by anyone having ill motive towards the petitioner, otherwise the petitioner has neither any rivalry against the victim nor has any grudge of any manifestation. He has further contended that there was no occasion for the petitioner to indulge in the stated occurrence; that case of the petitioner falls within the ambit of further inquiry; that the petitioner/accused was not present at the spot at the time of occurrence; the petitioner / accused is previously non convict. Lastly, he prayed for confirmation of bail before arrest.

04. On the other hand, learned counsel for the complainant as well as state counsel have controverted the contentions raised on behalf of the petitioner / accused and prayed for dismissal of pre-arrest bail.

05. I have considered the arguments advanced by the learned counsel for the petitioner / accused, complainant and learned state counsel as well as perused the material available on record.

06. There are 06 eye witnesses of the occurrence, out of which 03 were injured during the occurrence. The I.O has informed that petitioner / accused is involved in six other criminal cases, out of which, one case under section 7-ATA has also been registered against the petitioner/ accused.

07. Investigating Officer has contended that

sufficient evidence is available against the present petitioner for causing fire arm injury to Sohail Anjum and launching attack on the deceased party. Investigating Officer has further contended that recovery of crime weapon i.e. pistol 30-bore is yet to be effected. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon **PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

08. Bail before arrest cannot be claimed as a matter of legal right in each case and also it cannot be expected that it would be granted in each case unless legal requirements laid down are met. It is to be kept in view that bail granted before arrest, causes setback in investigation and can stand as stumbling block in the way of recovery of incriminating articles.

09. It has been held in **PLD 1994 Supreme Court 133** that *“Grant of pre-arrest bail means that accused is exempted from joining the investigation and by not joining the investigation, prosecution case may suffer for want of recovery of incriminating articles and other material, which may be necessary to connect the accused with*

commission of alleged crime”.

10. It is well settled principle of law that plea of alibi can only be considered by the trial Court after recording of evidence. Reliance is placed upon cases titled as **Waqar-ul-Haq V. State (1985 SCMR 974) and Bahadur V. Muhammad Latif (1987 SCMR 788).**

11. It is well settled law that relief of pre-arrest bail is granted only in those matters where it would appear that the registration of such cases was passed on enmity / malafide or where no offence was shown to have been committed on the very face of record, this is not the position in the instant case. Reliance is placed upon **PLD 83 Supreme Court 82, 1996 SCMR 74 and 1996 SCMR 71.**

12. In case titled as **Rana Abdul Khaliq V. The State and others (2019 SCMR 1129)** that *“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation”.*

13. In the recent order passed by Hon’ble Supreme Court of Pakistan in case titled as

Kamran Attaullah and another V. The in Criminal Petition No. 149-K of 2020, it is held that ***“It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information / evidence consequent upon arrest. Mala fide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means”.***

14. There can be no escape from the fact that petitioner / accused is nominated in the FIR with a specific role of causing fire arm injury to one Sohail Anjum. The said injured PW has accused the petitioner and stands by his statement. There is sufficient material on record to connect the petitioner / accused with the crime. The offences fall under the prohibitory clause of section 497 C.r.P.C.

15. Considering the above facts and circumstances, I am clear in my mind that the petitioner / accused has failed to make out a case for grant of pre-arrest bail, consequently, instant bail petition stands ***dismissed***. Ad-interim bail already granted to the petitioner / accused vide order dated 03.02.2021, passed by this Court is

hereby recalled.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal

Approved for reporting.