

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.
Criminal Misc. No. 156-B of 2021

Dilshad Khan
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.
(02)	08.03.2021	Mr. Sajid Haider Malik, Advocate for the petitioner / accused. Malik Muhammad Zulfiqar, Advocate for the complainant. Mr. Mashhood Azam Awan, State Counsel. Petitioner in person. Ashiq Hussain Shah, Inspector.

Through the instant petition, the petitioner seeks bail before arrest in case F.I.R. No. 22/21, dated 22.01.2021, offences under section 302/34 P.P.C., registered at police station Shams Colony, Islamabad.

02. Brief facts of the case are that the complainant / Gul Amber son of Chaman Khan moved an application before the SHO police station Shams Colony, Islamabad, stating therein that on 22.01.2021, at around 07:30 p.m., when he came out of Masjid after offering prayer, he saw petitioner / accused namely Dilshad son of Anwar Khan along with another person present at the gate of his house. As the complainant was approaching towards them, petitioner / accused started firing inside the open gate and then ran away along with his companion. The complainant hurriedly entered inside the house and saw his daughter namely Nosheen, smeared with blood,

who was lying in the courtyard. The grandson of the complainant namely Hamid Zaib made a call to Rescue-15 and 1122, however, his daughter died before their arrival. There was a dispute between the complainant's deceased daughter and petitioner / accused about the custody of their son, while the minor boy, after getting angry with his father i.e. petitioner/accused Dilshad, left his abode and was residing with his mother (i.e. deceased Nosheen), and did not want to go back. For such a reason, the petitioner/accused became furious upon his ex-wife namely Mst. Nosheen / deceased and had threatened her on number of occasions in past, and due to such a reason, petitioner / accused killed her, hence the instant FIR.

03. Learned counsel for the petitioner / accused contends that the petitioner was not present at spot at the time of occurrence. Son-in-law of the complainant has also nominated brother of the petitioner / accused in the case who was declared innocent by the police on the plea of alibi and has been granted bail after arrest by the Court of learned Additional Sessions Judge, Islamabad. He further contends that there was no dispute between the parties and there is no motive of the petitioner / accused for committing murder of his ex-wife and lastly prayed that bail before arrest of petitioner / accused be confirmed.

04. On the other hand, learned state counsel

assisted by learned counsel for complainant contends that sufficient evidence is available on record against the petitioner/accused. The offences fall under the prohibitory clause of section 497 Cr.P.C, even the petitioner / accused has already been nominated by the deceased as an accused for abduction of her son; accused has committed a heinous crime and is not entitled for confirmation of bail before arrest.

05. Arguments heard, record perused.

06. Petitioner / accused is nominated in the FIR with a specific role of committing Qatl-e-Amd of complainant's daughter, Mst. Nosheen. The complainant is real father of the deceased and is also an eye-witness of the occurrence. Admittedly, the deceased and the petitioner were married in the year 2008, out of the wedlock a son was born in the year 2009 and thereafter the petitioner / accused pronounced divorce in the year 2013. The minor son was living with his father but when he grew up, he wanted to live with his mother. The accused was not happy, therefore, he filed an application before the learned Sessions Judge, Islamabad under section 491 Cr.P.C. wherein he alleged that his son was abducted by the mother / deceased. On 11.12.2020 the deceased submitted an application to SHO, Women Police Station, Islamabad, wherein it was mentioned that some unknown persons while riding a bike came close to her and issued threats and also shown some

weapons and stated that leave her son i.e. Farhan aged about 10 years, who was living with his father after the divorce. She has further stated in the application that it was second attack upon her / deceased.

07. I.O has informed that there is no plausible evidence of the plea of alibi taken by the petitioner/accused and stated that the petitioner / accused is involved in the case and recovery of weapon is yet to be effected and other evidence will also be collected during the course of investigation. 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).**

08. It was held by Hon'ble Supreme Court Of Pakistan 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”.

09. 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”.***

10. 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 24.02.2021, passed by this Court is hereby recalled.

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

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**

Approved for reporting.