

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

Criminal Misc. No. 37-B of 2021

Babar Hussain

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.
(09)	01.03.2021	Mr. Izrar Ali, Advocate for the petitioner / accused. Mr. Zahid Asif ch., Advocate for the complainant / respondent No.2. Abdul Sattar, Inspector.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 20/20, dated 24.01.2020, offence under section 302, 324, 148, 149 P.P.C, registered at police station Banni Gala, Islamabad.

02. Brief facts of the prosecution case in hand are that one Mubasher Mehmood s/o Zafar Mehmood reported to police station Banni Gala, Islamabad that on 24.01.2020 at 03:30 p.m., he was present at his shop along with Iftikhar Ali, Hussain Ahmed and Rizwan Hussain. In the meanwhile Zulfiqar Ali armed with 44 Bore, Ghulam Ali armed with Kalashankove, Wahid Mehmood armed with hatchet, Akram Ali armed with danda, Raheel armed with Kalashankove, Tariq *alias* lali armed with 30 bore pistol, Injeel armed with 30 bore pistol, Nasir Hussain Shah armed with 30 bore pistol, Adeel armed with danda, Shamran armed with danda and Zeeshan armed with pistol along with 4/5 unknown persons residents of Dhok Dana came to Pind Begwal, Rawalpindi, where Zulfiqar raised a

lalkara that he will teach lesson to Mubasher etc, for registration of FIR regarding yesterday's incident and started indiscriminate firing. Ghulam Ali inflicted a blow with butt of Kalashankove at the head of Iftikhar Ahmed, whereupon he got injured, whereas Akram Ali inflicted danda blow on the head of Hunain Ahmed, other co-accused also attacked indiscriminately due to which Ghulam Ali and Zulfiqar got injured by their own companions. Zeeshan Ali inflicted steal rod blow upon Rizwan. Due to the indiscriminate firing of the accused party 3/4 passers-by also got seriously injured.

03. On the other hand, one Gul Jabbar submitted a written application to the SHO on behalf of Muhammad Akram, wherein it was alleged that at 03:20 p.m. he was waiting for the opening of Abdullah Traders Simlidam Road Store for buying grossery, Ghulam Ali, Adeel and Anjeel were also present there. In the meanwhile owner of said store came and started opening the store, whereas Qamar and Bashir armed with 9mm pistol, Israr armed with knife, Baber armed with danda, Imran armed with pistol 30 bore, Rizwan armed with danda, Mubasher armed with Kalashankove, Mudasar armed with 30 bore pistol alongwith 5/6 unknown persons armed with weapons came there. Imran and Qamar raised lalkara, Babar inflicted danda blow on the head of Ghulam Ali due to which Ghulam Ali got injured and fell down. Rizwan inflicted danda blow on the left arm of Adeel and caused fracture of his arm, Israr inflicted chhuri

blow on the hand of Injeel, whereupon he got injured and all the persons started indiscriminate firing due to which some passers-by also got injured. The reason behind the occurrence was exchange of harsh words between the relatives of the complainant of cross version and the accused party, one day prior to the occurrence.

04. Learned counsel for the petitioner / accused contends that the petitioner / accused is innocent and has maliciously been implicated in the case; no offence appears to have been committed by the petitioner; the allegations are based upon false and frivolous story; the complainant party of cross version has subsequently committed murder of real brother and nephew of the petitioner while entering into their house. The contention of complainant in the present cross version is also belied in the light of evidence available on the record; video footage of the occurrence clearly proves that the petitioner has not committed the murder of Ghulam Ali deceased; there is an inordinate delay in registration of cross version at 12:30 a.m. midnight which clearly proves that the cross version has been prepared with malafide intention and ulterior motives and the matter is of further inquiry. Lastly he has prayed for release of the petitioner / accused on bail after arrest and has relied upon cases titled as “*Muhammad Aslam and another V. The State through A.G Punjab and another (1997 SCMR 251), Muhammad Anees V. The State and others (2011 YLR 2805), Ghulam Abbas alias*

GAMAN and others V. The State and others (2017 SCMR 1730), Noor Muhammad V. The State and another (2020 SCMR 1049), Amir Ali and others V. The State (1984 SCMR 521) and Zulfiqar Ali V. The State (1996 MLD 1457)”.

05. On the other hand learned counsel for the complainant of cross version contends that the petitioner / accused has committed a heinous crime; cause of death clearly proves that Ghulam Ali (deceased) died due to head injury caused by the petitioner; the petitioner / accused has been attributed a specific role; sufficient material is available on the file which connects the petitioner with the commission of offence and weapon of crime i.e. danda has also been recovered from the petitioner / accused. Lastly he has prayed that the petitioner / accused is not entitled for bail after arrest and has relied upon cases titled as ***Muhammad Abbasi V. The State and another (2011 SCMR 1606), Yasir V. The State and another (2017 MLD 444), Shehryar Khan V. The State and another (2020 SCMR 1436), Arif Din V. Amil Khan and another (2005 SCMR 1402), Muhammad Usman and another V. The State (1975 SCMR 391), Asif Ayub V. The State (2010 SCMR 1735), Jehanzeb alias Bhobi V. The State (2002 SCMR 1380), Shahid Farooq V. The State and others (2011 SCMR 1619), Mudassar Altaf and another V. The State (2010 SCMR 1861), Khalida Bibi V. Nadeem Baig (PLD 2009 Supreme Court 440), Mohsin Ali V. The State and others (2016 SCMR 1529), Muhammad Aslam and others***

V. The State and others (2016 SCMR 2094) and Nasir Muhammad Wassan and another V. The State (1992 SCMR 501).

06. Arguments heard, record perused.

07. The FIR of the occurrence was registered on 24.01.2020 at 06:35 p.m., whereas the cross version was reported at 12:30 a.m. on 25.01.2020. No plausible explanation of delay in registration of cross version has been mentioned. The place of occurrence mentioned in the FIR is a shop of complainant's party of FIR, whereas in cross version the complainant party has mentioned that they were present at the shop of Abdullah Traders owned by Baber s/o Altaf Hussain. Now it is to be seen during the trial that who was the aggressor. The complainant of the FIR Mubasher Mehmood s/o Zafar Mehmood has nominated 15 accused and has alleged that 03 persons were injured during the occurrence and one injured person namely Hunain Ahmed s/o Khursheed Ahmed received danda blow from the other party.

08. The complainant of the cross version Muhammad Akam s/o Muhammad Anwar has nominated 11 accused and has alleged that 03 persons were injured and one Ghulam Ali died due to injury of danda inflicted on his head by the present petitioner. It is further argued that Injeel also received danda blow on his head. There were 03 passers-by who were also injured in the occurrence. Police has recovered dandas from the accused of FIR as well as accused of cross version

and the present petitioner. The dandas, which were recovered from 03 accused, proved that many people got injured due to the using of dandas by the accused, during the course of occurrence.

09. Before registration of the instant FIR, the accused party of FIR launched an attack on complainant party of FIR and made indiscriminate firing etc., whereupon FIR No. 21/2020 dated 23.01.2020, offences under sections 337-H(ii), 506(ii) and 34 P.P.C. was registered at police station Nilore.

10. On 13.04.2020, the members of the accused party of FIR again launched an attack and has murdered complainant of the FIR namely Mubasher Mehmood who is nephew of the present petitioner, and father of Mubasher namely Zafar Mehmood who is real brother of present petitioner, whereupon FIR No. 102/20 dated 14.04.2020, offences under sections 302, 449,148,149,109 P.P.C. was registered at police station Nilore.

11. The superintendent of police has conducted a detailed inquiry, wherein statements of the witnesses have been recorded. After examining photographs and video of the occurrence, he has given the findings that the presence of the petitioner at the place of occurrence is established but there is no evidence that he has inflicted danda blow on the head of Ghulam Ali deceased, which is cause of his death. I.O has also mentioned that there is no evidence regarding causing of danda blow at head of the deceased by the petitioner in

daily dairy No. 58 dated 16.07.2020. Police has recorded statements of 04 witnesses of cross version i.e. Raheel, Zulfiqar, Injeel and Adeel. Two eye witnesses namely Raheel and Zulfiqar have not stated in their statements that present petitioner has inflicted danda blow on the head of Ghulam Ali (deceased). The deceased was also involved in 11 FIRs of offences of different nature.

12. All the accused arrested from both the parties have been released on bail after arrest by the Court of learned Additional Sessions Judge, Islamabad. The dandas have been recovered by the police on 25.10.2020 from shop of the petitioner, lying with the other articles.

13. Question of aggression is still to be determined. In the reported case titled as **“Sohaib Mehmood Butt V. Iftikhar-ul-Haq (1996 SCMR 1845)”**, the Hon’ble Supreme Court while providing guidelines for the exercise of jurisdiction in bail matter in the cases of two counter versions arising from the same incident held as under;

“Now what would constitute as sufficient grounds for further inquiry would depend on the peculiar facts of each case and no hard and fast rule can be laid down for that purpose. Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial Court subsequently after evaluation of evidence. Broadly speaking, the condition laid down in

clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further inquiry into his guilt which means that the question would be such which has nexus with the result of the case and may show or tend to show that accused is not guilty of the offence with which he charged. For example, if accused is charged for offence under section 302, P.P.C. but there are grounds for further enquiry which may show that he may not be convicted of the charge under section 302, P.P.C. but may be acquitted or convicted for a lesser offence.”

“In the counter-versions arising from the same incident, one given by complainant in F.I.R and the other given by the opposite party case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed”.

Further reliance in this regard can also be placed on the case titled as **“Mehmood Akhtar and another V. Haji Nazir Ahmad and 4 others (1995 SCMR 310)”**.

14. It is important to remember that bail is not to be withheld as punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

15. In view of hereinabove, I am of the opinion that the petitioner/accused has made out a case for grant of bail at this stage as the matter requires further inquiry. Accordingly, the instant petition is accepted and the petitioner / accused is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 500,000/- (Rupees Five Hundred Thousand only)** with two sureties in the like amount to the satisfaction of learned trial Court.

16. Needless to observe that the observations made hereinabove are tentative in nature and the learned trial Court shall not be prejudiced by any

such observation and shall decide the case on merits in view of the evidence available on record.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal