

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

Crl. Misc. No.735/B/2019.

Mukarram Khan

Versus

The State etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.12.2019.	Sardar Muhammad Hafeez Khan, Advocate for the petitioner. Mr. Naeem Ahmed Awan, State Counsel. Chaudhry Qaiser Imam, Advocate for respondent No.2. Tanveer, ASI/I.O, P.S Shalimar, Islamabad alongwith record.
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Through instant petition, the petitioner has prayed for post arrest bail in case FIR No.216/2019, dated 27.06.2019, U/S 324, 365, 452, 341, 148, 149 PPC, P.S Shalimar, Islamabad.

2. Brief facts are that respondent No.2/complainant got lodged the above mentioned FIR with the allegations that on 27.06.2019, at about 8:30 p.m, he came to the house of his nephew, where Syed Qamer Abbas and Syed Ilyas Raza alongwith family were present, in the meanwhile 3/4 persons armed with pistol and other weapon of offence entered in the house by scaling over the wall and made hostage all the family, thereafter they tried to kidnap Syed Ilyas Raza on gun point, on which Syed Qamer Abbas intervened and resisted the abduction near main door of the house, when Mukaram Khan (present petitioner), Noshad Khan and Haji Said Wali entered in the house alongwith 3/4 unknown persons and directed one of the unknown person to take Syed Ilyaz Raza. Haji Said Wali raised Lalkara to murder Qamer Abbas and on his instruction Mukarma Khan (present petitioner) and Noshad assaulted Qamer Abbas and later on the petitioner fired with .30 bore pistol upon Qamer Abbas, which hit him on right thigh. Upon hue and cry nephew of respondent No.2, came out of the Masjid and intervened when the accused

persons were shifting Syed Ilyas Raza forcibly in the vehicle, the accused persons made fire shots upon Syed Imran Saghir, which hit on his legs. The accused persons resorted to aerial firing and fled away from the scene alongwith Syed Ilyas Raza. The accused persons came on two cars Cultus and Corolla. The motive behind the incident is dispute amongst the parties regarding guarantee cheque issued by Syed Ilyas Raza.

3. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in this case; that cross-version of the petitioner has already been recorded by the police in the same FIR on the direction of Ex-Officio Justice of Peace; that the petitioner alongwith his brother went to visit Syed Ilyas Raza with whom they had civil dispute regarding different plots of CDA, which could not be transferred by him despite receiving Rs.1,60,00,000/- in different interval of times and when they reached to the Syed Ilyas Raza, entire family including respondent No.2/complainant attacked upon the petitioner and his brother, however, they fled away from the scene and later on they came to know that the FIR has been lodged against them; that this is case of cross-version, therefore, the petitioner is entitled for concession of post arrest bail on the ground of further inquiry; that role attributed to the petitioner is of causing firearm injury on the right thigh of Qamer Abbas, which is non-vital part; that the petitioner is no more required for the purpose of further investigation as challan has been submitted in the Court.

4. Conversely, learned counsel for respondent No.2/complainant contends that the petitioner is master mind of the entire incident, in which he alongwith his co-accused came to the house of Syed Ilyas Raza and kidnapped Syed Ilyas Raza on gunpoint and in the said incident the petitioner injured Syed

Qamer Abbas with firearm in his house; that co-accused of the petitioner Noshad Khan and Haji Said Wali injured his nephew Syed Imran Saghir by firing as such the offence U/S 324 PPC is attracted and falls within prohibitory clause of section 497 Cr.P.C; that the petitioner has acknowledged his presence on the spot in his cross-version as well as in the application filed by him U/S 22-A, Cr.P.C and there is no doubt qua his presence in the said incident and he cannot be given premium of cross-version, which is not justified, especially when Syed Ilyas Raza recorded his statement U/S 164, Cr.P.C and confirmed role of the petitioner in specific manner.

5. Learned State Counsel contends that investigation has been completed and challan has been submitted before the Court; that one of co-accused Noshad Khan is still at large, hence, the petitioner is not entitled for concession of post arrest bail.

6. I have heard the arguments and perused the record.

7. Tentative assessment of record reflects that the petitioner is nominated accused in case FIR No.216/2019, dated 27.06.2019, U/S 324, 365, 452, 341, 148, 149 PPC, P.S Shalimar, Islamabad registered on the complaint of respondent No.2. The petitioner has been attributed specific role of kidnapping Syed Ilyas Raza from his house in presence of his family members on gunpoint with the help of co-accused, who were also armed and during the said incident the present petitioner Mukarram Khan fired upon Syed Qamer Abbas, which landed on his right thigh and other co-accused of the petitioner resorted to firing, due to which nephew of respondent No.2 Syed Imran Saghir received 7 firearm injuries on his legs, whereby the petitioner alongwith other co-accused successfully kidnapped Syed Ilyas Raza.

8. Cursory glimpse of the record reveals that the dispute amongst the parties is of dishonour of guarantee cheque issued

by alleged abductee Syed Ilyas Raza in the name of petitioner Mukarram Khan. The petitioner has taken plea of cross-version, where he acknowledged that he visited house of Syed Ilyas Raza on the day of occurrence and tried to settle the issue and no event of abduction took place and he is also not aware as to how and when the other P.W has been injured. This factum prima facie proves that the petitioner was present on spot and he has been arrested on 8.10.2019 after about 3 months of the alleged occurrence. During the investigation, the petitioner got recovered the weapon of offence i.e. pistol on 14.10.2019 as such the petitioner has been linked with the alleged occurrence, which has further been corroborated with the statements of the witnesses, who were injured in the alleged incident and even Syed Ilyas Raza alleged abductee was released by the petitioner and his co-accused on the same day of occurrence, who got recorded his statement U/S 164, Cr.P.C and explained role of the petitioner in the said incident. One of co-accused Noshad Khan is still at large.

9. The accumulative effect of entire case discloses that the petitioner is involved in the alleged kidnapping of Syed Ilyas Raza by entering in his house, which itself is an offence U/S 365 and 452 PPC i.e. house trespass after preparation of causing hurt to any person or for assaulting any person or for wrongfully restraining any person or for putting any person in fear of hurt or of assault or of wrongful restraint, which provides sentence of 7 years with fine. Moreover, offence U/S 324 PPC is non-bailable and falls under prohibitory clause of section 497, Cr.P.C.

10. The plea of cross-version can only be seen at the time of trial. Prima facie it appears that the petitioner alongwith his co-accused kidnapped Syed Ilyas Raza in order to resolve his civil dispute in desperate manner after preparation while trespassing

into his house. The conduct expressed by the petitioner does not justify any ground of further inquiry or any benefit in his favour for grant of post arrest bail, especially when challan has been submitted before the Court on 25.11.2019 and one of co-accused is still at large. Even the vehicles used in the incident have not been recovered and the investigation is in progress. Challan has been submitted before the Court. In these circumstances, the petitioner is not entitled for concession of post arrest bail and it is appropriate to issue direction to Trial Court for early conclusion of the Trial. Reliance is placed upon **2011 SCMR 1332 (Rehmat Ullah vs. The State and another)**.

11. For what has been discussed above, the instant petition is **dismissed**. However, learned Trial Court seized with the matter is directed to conclude the trial within a period of 06 months from the date of receipt of copy of this order under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam