

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No.209/B of 2020

Ch. Muhammad Rafique

VS

The State and another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
---	---	--

08.04.2020.	Mr. Danish Ishraq Abbasi, Advocate for the petitioner alongwith the petitioner. Malik Qamar Abbas, Advocate for respondent No.2/Complainant. Mr. Tofeeq ul Irfan Raja, learned State Counsel. Malik Muhammad Naeem Iqbal, S.P. (Rural Circle), Islamabad. Mr. Sajid Cheema, Inspector (Legal). Mr. Hakim Khan, SHO. Muhammad Akram, S.I. Muhammad Riaz Noon, ASI.
--------------------	--

The petitioner, Ch. Muhammad Rafique son of Muhammad Hussain, seeks bail before arrest in case F.I.R. No.46, dated 18.02.2020, under Sections 324, 109, 34 P.P.C., Police Station Shahzad Town, Islamabad.

2. The case of the prosecution against the petitioner is that on the complaint of respondent No.2, the above-mentioned F.I.R. was registered; it is alleged in the F.I.R. that the complainant on 11.02.2020 at about 09:10 P.M. was going home in taxi, when he was intercepted by two unknown persons riding motorcycle, who fired at him and he

received one bullet in his stomach and the other in the arm. It was also stated that he can identify the persons. The complainant also alleged that the reason for attack on him is that his elder brother and his brother in law i.e. the petitioner have family disputes and in the Jirga convened by the family, the petitioner threatened the complainant.

3. The petitioner applied for bail before arrest, which was dismissed by the learned Additional Sessions Judge (East), Islamabad, vide order dated 16.03.2020.

4. Learned counsel for the petitioner, *inter-alia*, contended that there is delay of about seven days in lodging of the F.I.R., which is not explained; that the only role attributed to the petitioner in the F.I.R. is of abetment under Section 109 P.P.C. It was further contended that the allegations as levelled in the F.I.R. are baseless and based on malafide.

5. Learned State Counsel alongwith counsel for the complainant, *inter-alia*, contended that there is no delay in lodging of the F.I.R. inasmuch as on 11.02.2020, an application was made to the hospital authorities for recording of the statement of the complainant but due to the endorsement by the relevant Medical Officer that the

complainant is not fit for statement the matter was deferred. It was further contended that on 18.02.2020 application was made again, which was allowed and only then the statement of complainant was taken down and on the basis thereof the F.I.R. was registered. It was contended that the statements have been made during the course of investigation by Mst. Ishtiaq, wife of the petitioner and the brother of the petitioner confirming the position that in the Jirga the petitioner threatened the complainant. It was contended that the police authorities required the petitioner for further investigation in the matter inasmuch as the whereabouts of persons, who carried out the attack are not known. It was further contended that the case of the petitioner does not fall within the parameters of bail before arrest in light of the recent pronouncement of the Hon'ble Supreme Court of Pakistan in case reported as "*Gulshan Ali Solangi and others Vs. The State through P.G. Sindh*" **(2020 SCMR 249)**.

6. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. The thrust of the arguments by the learned counsel for the petitioner for seeking

bail before arrest was that there is a delay of about seven days in lodging of the F.I.R. In this behalf, the learned State Counsel placed on record the request made by the police authorities to the Pakistan Institute of Medical Sciences (PIMS) for recording of the statement of the complainant on 12.02.2020 at about 12:30 A.M.; whereupon, the relevant Medical Officer turned down the same on the ground that the complainant is not fit for statement. It is pertinent to observe that the alleged incident is of 11.02.2020 at about 09:10 P.M. The request was made again for recording of the statement on 18.02.2020, which was allowed by the hospital authorities whereupon statement of the complainant was taken and on the basis thereof the F.I.R. was lodged.

8. In view of the referred facts and circumstances, no delay can be attributed to the complainant in approaching the police authorities or recoding of the F.I.R. The petitioner has failed to point out any malafide or ulterior motives on part of the complainant or the police authorities seeking his arrest. The remedy of bail before arrest is an extraordinary remedy and is to be granted only to prevent the humiliation of arrest to an innocent person; it is not granted to hamper

the investigation of the criminal case. Reliance is placed on "*Gulshan Ali Solangi and others Vs. The State through P.G. Sindh*" **(2020 SCMR 249)**.

9. In view of the above position, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua