

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

Criminal Misc. No. 46/B/2019.

Muhammad Irfan

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.
	19.02.2019.	Mr. Naseer Anjum Awan, Advocate for petitioner. Ms. Saima Naqvi, State Counsel. Raja Rizwan Abbasi, Mr. Sohail Akhtar and Ms. Naila Noreen, Advocates for respondents No.2 & 3. Muhammad Munir, S.I, P.S. Bhara Kahu, Islamabad.

Through this CrI. Misc. petition, the petitioner has applied for post-arrest bail in case FIR No.312, dated 29.07.2018, U/S 302 PPC, P.S. Bhara Kahu, Islamabad.

2. Brief facts referred in this criminal case are that complainant/respondent No.2 has got lodged instant FIR with the allegation that he was present at his house on 28.07.2018 at around 11:00 p.m. in the night when his son Sharafat and grandson Aadil came to house. In the meanwhile, Arzeef, Nokhaiz and Faris duly armed with Kalashnikov came on the spot and Arzeef raised lalkara to commit murder of Sharafat, by his command Nokhaiz and Faris both resorted to firing with Kalashnikov, as a result whereof Sharafat received number of injuries and died on spot, where-after accused fled away from the scene. The motive is dispute of land between Azreef and Sharafat, which was resolved by the family members (برادری) but accused persons were not happy with said resolution.

Respondent No.3/widow of deceased Sharafat has also submitted a complaint in which she has nominated the present petitioner/Muhammad Irfan, Farhat Abbas and Muhammad Tahir duly armed with Kalashnikov resorted to firing as a result whereof Sharafat died within the premises of her house.

3. Learned counsel for the petitioner contends that initial FIR was got lodged by respondent No.2/father of deceased with different set of accused and after five days of occurrence widow of deceased got lodged complaint through separate statement in which petitioner was nominated and earlier nominated accused were exonerated; that case of the petitioner falls within the ambit of further inquiry due to serious doubts emerging on record qua the different versions of the prosecution story; that petitioner was arrested on 17.09.2018 and challan was submitted in the Court on 02.10.2018 and even otherwise, second set of accused nominated by the widow of deceased were arrested and weapon of offence has been recovered from them and the petitioner is only assigned the role of lalkara.

4. Conversely, learned counsel for respondent No.3 as well as learned State Counsel contends that respondent No.2/father of deceased has got lodged instant FIR without any basis rather mislead the police investigation and he was not present at the scene of occurrence rather she/respondent No.3 alongwith Suriya Bibi/sister of deceased were present when

present petitioner/Muhammad Irfan, Farhat Abbas and Muhammad Tahir came at the place of occurrence and resorted to firing and committed murder of Sharafat Hussain; that petitioner Muhammad Irfan has been nominated in different criminal cases of similar nature and as such is hardened and desperate criminal, hence, not entitled for any concession of bail.

5. Arguments heard, record perused.

6. From the cursory perusal of record, it has been observed that petitioner has been nominated in criminal case FIR No.312, dated 29.07.2018, U/S 302/34 PPC, P.S. Bhara Kahu, Islamabad on the basis of subsequent supplementary statement of respondent No.3/widow of deceased and as such first version recorded in the FIR got lodged by father of deceased/respondent No.2 is entirely different. However, in order to reach at just conclusion, it is necessary to place both the versions, side by side in juxtaposition, which are as under:-

<u>FIR No.312/2018</u> <u>(Manzoor/complainant</u> <u>/father of deceased)</u>	<u>Statement of Mst. Salma</u> <u>Sharafat (widow)</u>
بخدمت جناب SHO صاحب تھانہ بھارہ کہو اسلام آباد جناب عالی گزارش ہے کہ سائل زمین داری کرتا ہوں مورخہ 28.7.18 بوقت تقریباً 11 بجے رات میں گھر کے ساتھ گائے والی جگہ پر موجود تھا کہ میرا بیٹا شرافت اور پوتا عادل گاڑی سے اترے جو نہی گاڑی سے اترے تو میں نے اپنے پوتے کو چار اڈالنے میں مدد کے لیے بلایا میرا بیٹا گھر میں داخل نہ ہوا تھا کہ اتنے میں ارزیف، نوخیز، فارس آئے ہمارے گھر کی لائٹس جل رہی تھیں کافی روشنی تھی ارزیف نے لکارا مارا کہ آج اسکو زندہ نہیں چھوڑے گے اپنے بیٹے نوخیز اور بھائی فارس کو حکم دیا کہ اسکو جان سے مار دو جس پر نوخیز مسلح کلاشکوف، فارس مسلح کلاشکوف نے اندھا دھند	بیان کیا کہ ایڈریس بالا کی رہائشگی ہوں میں مورخہ 28.07.2018 اپنے گھر پر موجود تھی رات تقریباً 11/30 بجے تک میرا شوہر شرافت حسین گھر پر نہ آیا تھا جس وجہ سے بے چینی محسوس ہو رہی تھی میں نے اپنے کو کال کی کھنٹی بجتی رہی لیکن کال ریسپونڈ نہ ہوئی جس وجہ سے گھبراہٹ محسوس ہونا شروع ہوئی میں اپنے گھر کے صحن میں آگئی اسی دوران میری نند مسماہ ثریا بی بی جو کہ ساتھ والے کمرے میں سوئی ہوئی تھی جاگ کر میرے پاس آگئی چند لمحوں بعد گلی سے اونچا بولنے کی آواز آنا شروع ہو گئی ہم دونوں گلی میں دہائیں طرف والے دروازے سے باہر نکلیں گلی میں اچھی خاصی روشنی تھی ہم نے دیکھا کہ محمد عرفان ولد محمد رمضان

<p>فائرنگ کی جو کہ میرے بیٹے شرافت کے مختلف حصوں پر لگے وہ زمین پر گر گیا میرا بیٹا موقع پر ہی جان بحق ہو گیا اور زلیف نے کہا کہ ہم نے آج بدلہ لے لیا ہے وہ اپنے گھر کی طرف بھاگ گئے میں اور میرے پوتے نے خود دیکھا وہ عناد زمین کا تنازعہ ہے جس پر میرے بیٹے اور زلیف کا جھگڑا ہوا جس پر وہ زخمی ہوا تھا بعد میں برادری دباؤ پر راضی نامہ کیا مگر راضی نامہ سے یہ لوگ خوش نہ تھے آج میرے بیٹے کو ناحق قتل کیا ہے۔</p>	<p>میرے شوہر شرافت حسین سے تلخ لہجے سے تکرار کر رہا تھا اسی دوران فرحت عباس اور محمد طاہر بھی موقع پر پہنچ آئے دونوں مسلح کلاشنکوف دیکھتے ہی عرفان نے کہا کہ آج اس کو کمیشن مانگنے کا مزہ چکھاتے ہیں طاہر اور فرحت عباس نے اندھا دھند میرے شوہر پر فائرنگ شروع کر دی جس سے وہ شدید زخمی ہو کر گر پڑا ہم دونوں اسکی طرف لپکیں لیکن وہ موقع پر زخموں کی تاب نہ لاتے ہوئے دم توڑ گیا اسوقت میرا سرسر گھر میں سو رہا تھا جبکہ میرا بیٹا گھر میں موجود نہ تھا۔</p>
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7. Keeping in view the above two different versions on record the investigation officer during the course of investigation has taken into custody the nominated accused namely Muhammad Irfan/present petitioner, Muhammad Tahir and Farhat Abbas and even got recovered the weapon of offence i.e. Kalashnikov. The record further reveals that two weapons of offence have not matched with crime empties recovered from the scene of occurrence during the examination conducted by Punjab Forensic Science Agency, Lahore. In such like circumstances bail should be granted. Reliance is placed upon 2008 P.Cr.L.J 982 (Muhammad Aleem Vs. The State) and 2003 YLR 1881 (Sher Ahmad Vs. The State and another).

8. The version recorded by the complainant/respondent No.2 has been disbelieved by the I.O, however, statements of Mst. Salma Sharafat/widow of deceased as well as Mst. Suriya Bibi W/o Amjad Hussain (sister of deceased) have been given weightage and confirmed in the investigation report, therefore, at this stage, while considering each and every aspect

when two conflicting version reflected on record from tentative assessment, in which one is given by the complainant in FIR and the other by the supplementary statement of one of the eye witness, matter falls within the ambit of further inquiry in terms of Section 497(2) Cr.P.C.

9. Even otherwise, petitioner has been assigned with the role of raising lalkara as such his role is considered to be on different footing with those accused who have actually committed the offence of murder. In such like eventuality bail has been granted by the Apex Court. Reliance is placed upon 2016 SCMR 18 (Zaigham Ashraf Vs. The State and others).

10. Cursory glimpse of record reflects that case is of two versions i.e. one put forwarded by the complainant/father of deceased in FIR and the other came through supplementary statement of widow of deceased, however, important question, which needs consideration as to which version is correct, however, the same would be determined during trial after recording of evidence and in such like situation benefit of doubt could be extended to accused even at bail stage. Reliance is placed upon 2018 MLD 934 (Mohsin Ali Vs. The State and another) and 2012 SCMR 1137 (Ehsan Ullah Vs. The State).

11. At last, it has been argued that petitioner is involved in number of similar criminal cases. However, it is settled law that mere pendency of different criminal

cases is not a ground to disentitle the accused for the grant of bail, if otherwise, he is entitled for bail. Reliance is placed upon 2018 MLD 745 (Tarique and 3 others Vs. The State).

12. In view of above background, the Court is bound to make the assessment of evidence in tentative manner and there is no clog and embargo on the Court's power to asses evidentiary value of material placed before it, however, Courts have to refrain, directly or indirectly, from giving any conclusive finding on question of guilt or innocence of accused. Reliance is placed upon PLD 1978 SC 256 (Khalid Javed Gillani Vs. The State).

13. Hence, by the tentative assessment of above referred material, this Court is of the view that petitioner has successfully made out case of further inquiry and as such is entitled for concession of bail, therefore, while considering the specific role of petitioner as that of lalkara in the entire case, instant post-arrest bail petition is allowed, subject to furnishing of bail bonds in sum of Rs.2,00,000/- with one local surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

APPROVED FOR REPORTING.

JUDGE