

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Criminal Misc. No. 473/B/2019.

Tahir Ashfaq

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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07.08.2019.	Mr. Shajjar Abbas Hamdani, Advocate for petitioner. Barrister Ayesha Siddiq Khan, State Counsel. Sardar Muhammad Nasir, Advocate for complainant/ respondent No.2. Abdul Waheed, S.I. P.S. Koral, Islamabad.
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Through this Crl. Misc. petition, the petitioner has applied for post-arrest bail in case FIR No.334, dated 28.07.2018, U/S 324/337-F(v)/337-F(ii)/337-Λ(vi)/34 PPC, P.S. Koral, Islamabad.

2. Brief facts referred in the instant case FIR got lodged by the complainant Mazhar Mehmood are that on 26.07.2018, he visited his parent's house near Sharifabad road, Sohwaran and when he was present on his brother Azhar Mehmood's shop his second brother Arshad Mehmood was present near the said shop at about 09:20 p.m. Tahir Ashfaq, Yasir Ashfaq sons of Ashfaq Ahmed and one unknown person armed with pistol raising lalkara and shouting upon the complainant's brother Arshad Mehmood came there. Tahir Ashfaq (present petitioner) fired upon Arshad Mehmood which landed on his right hand and the second fire landed on the right side of his head, who fell down. Later on he was taken to hospital, who was critically injured.

3. Learned counsel for the petitioner contends that petitioner was arrested on 17.12.2018 in this case; that challan has been submitted in the Court but charge has not yet been framed and there is no likelihood of early conclusion of trial in near future; that it is a case of further inquiry as such one fire empty was recovered from the place of occurrence and there is difference in ocular and medical evidence qua the timing, therefore, petitioner is entitled for concession of post-arrest bail.

4. Conversely, learned counsel for the State as well as learned counsel for complainant/respondent No.2 contends that petitioner has been nominated with specific role of causing firearm injury on the vital part of the body of Arshad Mehmood and as such he is not entitled for concession of post-arrest bail at this stage.

5. Arguments heard, record perused.

6. Tentative assessment of record reveals that petitioner has been nominated in criminal case FIR No.334, dated 28.07.2018, U/S 324, 337-F(v), 337-F(ii), 337-A(vi), 34 PPC, P.S. Koral, Islamabad and has been ascribed with specific role of causing two firearm injuries to Arshad Mehmood, whereby one of injury is on head which is fatal and on vital part. Both the injuries are fully corroborated with medical evidence and injured person remained in the hospital. The offence with which petitioner has been charged, falls within the ambit of prohibitory clause of Section 497 Cr.P.C.

7. Challan has been submitted in the Court and other witnesses also corroborate the incident in similar manner which is further confirmed by the injured PW after becoming conscious. Another important aspect which has to be considered being negative factor against the petitioner is the registration of 07 other criminal cases, whereby one of the connected FIR No.202, dated 02.07.2014, U/S 427, 337-A(ii)/34 PPC, P.S. Koral, Islamabad was got lodged by injured Arshad Mehmood against the petitioner. All these aspects show the conduct of the petitioner being hardened and desperate and as such there is no ground of further inquiry apparent on record in this case.

8. Petitioner remained absconder for 05 months after the alleged incident and on this score alone he is not entitled for concession of bail. Reliance is placed upon 2018 P.Cr.L.J. 481 (Habibullah Vs. Qadir Khan). The attempt to commit Qatl-i-amd *prima-facie* reveals from the record and in such eventuality petitioner is not entitled for any concession of post-arrest bail and the same is hereby dismissed on merits. However, while relying upon 2011 SCMR 1332 (Rehmatullah Vs. The State) learned trial Court seized with the matter is directed to conclude the trial on or before 31.01.2020 under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE