

Form No: HCJD/C-121.

ORDER SHEET.

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

Crl. Misc. No.168-B-2014

Ahsan-ul-Haq

Vs.

The State & Another

| S. No. of order/ proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|------------------------------|----------------------------|---|
| | 12.05.2014 | Mr. Muhammad Nazir Abbasi, Advocate for the petitioner. Raja Rizwan Abbasi, Advocate for complainant. Mr. Muhammad Jahangir Khan Jadoon, Standing Counsel with Azhar Mahmood, SI with record. |

Through the present petition, the petitioner seeks post arrest bail in connection with FIR No.12/2013 dated 14.09.2013 u/s 302/34 PPC, P.S. Bari Jala, Islamabad.

2. The above FIR was lodged on the formal complaint of Liaqat Ali, alleging therein that his son namely Shahid Mahmood aged about 27 years, was working as a watchman in the farm house of one Mazhar Hussain for the last 15/20 days. On 14.09.2013, at around 8:30 a.m., Qamar Zaman informed him, that Rustam had told him that his son was admitted in the PIMS Hospital, Islamabad on account of fire injury. The complainant went to the Hospital and found the

dead body of his son. There, he asked Abrar, Sajid and Mazher about the incident, and Mazhar told him that he was present in his house at 7:00 am, when he heard sound of firing from his farm house. He rushed towards the farm house, and there he found that Sabeel Ahmed equipped with Kalashnikov, Ehsan equipped with repeater, and Muhammad Tufail equipped with 30-bore pistol were fleeing away after firing. There, he found Shahid Mahmood lying inside the farm house, in an injured condition. He was taken to the hospital, but he succumbed to the injuries.

3. Earlier, the petitioner filed an application for pre-arrest, which was withdrawn by him on 22.10.2013 and on the same day, he was arrested by the police since then, he is behind the bars. The petitioner filed petition for bail after arrest, which was rejected by the learned Additional Sessions Judge, Islamabad vide order dated 08.04.2014, hence this bail petition.

4. It has been argued by the learned counsel for the petitioner that the above FIR has falsely been registered against the petitioner; that no role is attributed to the petitioner in the corpus of FIR; that the petitioner did not cause any injury to the deceased; that ineffective firing was attributed to the

deceased; that ineffective firing was attributed to the petitioner, which definitely makes the case of the petitioner as that of further inquiry; that there is a difference between the postmortem report and Naqsha Mazroobi of the deceased; that the complainant himself is not the witness of the occurrence, and whole of the prosecution story is built against the petitioner on account of some statement recorded u/s 161 Cr.P.C.; that there is no enmity between the petitioner and the deceased. While referring different FIRs, learned counsel for the petitioner has contended that various criminal cases were pending against the deceased. Moreover, he was absconder in case FIR No.491 dated 14.09.2007 registered u/s 392 PPC. In support of his contentions, he has relied upon 2013 YLR 1416 (Ramzan & Another Vs. The State) PLJ 2011 Cr.C. (Lahore) 119 (Allah Bachaya Vs. State & Another) & 2000 P.Cr.LJ 620 (Tasaver & Another Vs. The State).

5. Conversely, learned counsel for the complainant has argued that weapon of offence has been recovered on the pointation of the present petitioner. The prosecution witnesses have seen the petitioner being equipped with weapons, at the place,

6. Learned Standing Counsel has adopted the arguments advanced by the learned counsel for the complainant.
7. Arguments heard and record perused.
8. Admittedly, the complainant is not the eye witness of the alleged incident, but PW Mazhar Hussain, Sajjad Mahmood & Ibrar, who are eyewitnesses have implicated the present petitioner by assigning role through the statements recorded u/s 161 Cr.P.C.
9. Moreover, from the scene of incident, police has secured empty of Kalashnikov, two cartridges fired from repeater and empty bullets fired from the pistol.
10. The allegation against the present petitioner is that he fired in the air. It is stated by the PWs Sajjad Mahmood & Ibrar that the petitioner fired along with co-accused with repeater over them, who saved themselves by taking shelter of walls. Such act done on the part of the petitioner is duly supported by memo of recoveries and signs of firing available on the walls, which have also been noted by separate memo where the PWs hidden themselves.

11. Under these circumstances, the role of the petitioner is of the nature to facilitate others for committing murder and in this connection, he fired upon both the PWs with the repeater, which could not hit them, as they took shelter by hiding themselves behind the walls. For arguments' sake, the plea raised on behalf of the petitioner is believed to be correct for not causing injury to the deceased or any PWs, it might support the prosecution case, but attempt to commit murder is visibly available against him.

12. Under the circumstances narrated above, I am not inclined to grant bail to the present petitioner. Hence, this bail petition is dismissed.

13. The learned trial court is directed not to be influenced by the above observations, as the same are tentative in nature.

(NOOR-UL-HAQ N. QURESHI)
JUDGE