

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 751-B of 2020.

Sheraz Ali.
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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25.06.2020. Sardar Nisar Ahmed Khan, Advocate for the petitioner.
Kh. Manzoor Ahmed, Advocate for the complainant.
Mr Hasnain Haider Thaheem, State Counsel.
Mr Yaseen Ali Khan, SI and Mr. M. Shabbir ASI, with record.

The petitioner Sheraz Ali son of Muhammad Arif Awan has sought post arrest bail in case F.I.R. No. 07, dated 05.01.2020, registered under sections 324,452,337-F(iii),337-F(v),337-F(vi),506,109,34 of the Pakistan Penal Code 1860 (hereinafter referred to as "**PPC**") at Police Station Nilore, Islamabad.

2. The brief facts, as alleged in the FIR are that the petitioner alongwith other co-accused while armed with fire arm weapons trespassed the house of the complainant and injured him, her mother and his cousin. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; story as narrated in the FIR is false, frivolous and vexatious; offences do not come within the ambit of prohibitory clause; the petitioner has no criminal record; there is no direct or indirect evidence against the petitioner; the petitioner has been falsely involved in the instant case with

malafide intention just to harass and humiliate him; the complainant has converted family dispute into criminal litigation; infact the complainant's family had assaulted upon the petitioner's brother and co-accused namely, Danial Arif and caused them injuries, therefore a case FIR no. 562 of 2020 was registered against them; the instant case is a result of conspiracy; no incriminating material was recovered from the petitioner; recovery if any is fake and planted; the co-accused has been enlarged on bail, therefore, the petitioner is also entitled to the same relief, keeping in view the rule of consistency; offence under section 324 of PPC is not attracted against the petitioner because the injuries attributed to the present petitioner are on non vital parts of the body; due to pandemic situation in the country and deteriorating conditions in jail, the health of the petitioner is at stake, so the petitioner is entitled to the relief of bail; investigations qua the petitioner have been completed and he is no more required for purposes thereof; the petitioner has been incarcerated for more than three months; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; ingredients of alleged sections are not attracted against the petitioner; the petitioner is innocent and has not committed the alleged offences; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; no motive has been attributed to the present petitioner; the case against the petitioner is that of further probe; hence urged for the release of the petitioner on bail.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Yaseen Ali Khan, SI and M. Shabbir ASI. They have argued that; the petitioner alongwith his co-accused had attacked the complainant, his mother and cousin; report under section 173 of Cr.P.C. has been submitted before the learned trial

Court; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; incriminating material has been recovered from him; hence prayed for dismissal of the instant petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Admittedly, the parties are closely related to each other and it appears that there is a dispute between them regarding dissolution of marriage. Furthermore, the alleged occurrence had taken place on 20.02.2020, whereas the instant FIR was registered on 24.02.2020 i.e. after a delay of four days. Whether or not section 324 of PPC is attracted in this case needs further probe because this factor can only be established during the trial. Since the parties are known to each other therefore, whether the petitioner had forcibly entered the house also requires further probe. The role of the petitioner and his involvement in the instant case definitely needs further probe. It is settled law that deeper appreciation of evidence is not undertaken while deciding matters relating to grant of bail. The co-accused has been enlarged on bail. The investigations qua the petitioner have been completed and, therefore, his further incarceration would not serve any useful purpose. There is nothing on record to show that the petitioner has a criminal record or that there is an apprehension that he may abscond if released on bail. In the facts and circumstances of the case this Court is satisfied on the basis of tentative assessment that a case for releasing the petitioner on bail is made out.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others vs. The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is ***allowed*** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

CHIEF JUSTICE

*Asad K/**