

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 283-B of 2021

Hamza Sadaqat

Versus

The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	29.04.2021	Mr. Basharat Ullah Khan, Advocate for the petitioner / accused. Raja Rizwan Abbasi, Advocate for the complainant. Syed Shahbaz Shah, State Counsel. Fakhar Abbas, S.I.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 174/20, dated 30.07.2020, offences under section 302/324/148/149 P.P.C., registered at police station Nilore, Islamabad.

02. It is alleged that the petitioner / accused along with co-accused made direct firing upon the complainant party due to which three persons namely Kaleem Ullah, Zahid and Sajid Mehmood succumbed to the injuries at the spot, whereas Rashid got injured, hence the instant FIR.

03. Learned counsel for the petitioner contends that the petitioner / accused is innocent; he has got no concern with the commission of offence; the allegations leveled against him are false, frivolous and baseless; F.I.R was registered with unexplained delay and after due deliberation and consultation; there are contradictions in medical and ocular evidence; the petitioner was not

present at the spot, hence is entitled for grant of bail after arrest.

04. Conversely, learned State Counsel assisted by learned counsel for the complainant has opposed the bail petition and has contended that the petitioner / accused has committed a heinous crime; he is nominated in the FIR with specific role; police has submitted challan against the present petitioner, wherein he has been shown as an accused in column No. 3; the petitioner remained fugitive from law, hence he is not entitled for grant of bail after arrest.

05. I have considered the arguments advanced by the learned counsel for the petitioner / accused, learned counsel for the complainant and learned state counsel for the State as well as perused the material available on record.

06. The petitioner / accused is nominated in the F.I.R with specific role of causing fire arm injury with 44 bore rifle upon the deceased which hit Zahid / deceased on his head. Cause of death shown in the post mortem report is reproduced as under;-

“In my opinion deceased died due to F.A.I which caused ruptured and damaged of brain, membranes of brain, scalp and fractured = skull caused death. All injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature”.

07. Father of the accused namely Sardar Sadaqat is also nominated in the FIR who was arrested on 01.08.2020 but the petitioner neither surrendered himself before the police nor applied for bail before arrest and become fugitive from law, police has issued proclamation under section 87 Cr.P.C against the petitioner / accused, consequently he was arrested on 23.09.2020. On the basis of record of CDR, police has given the opinion that the petitioner / accused was not present at the spot but has placed the petitioner as an accused in column No. 3 of the challan / report under section 173 Cr.P.C which has been submitted in the Court on 13.10.2020.

08. It is well settled principle of law that plea of alibi can only be considered by the trial Court after recording of evidence. Reliance is placed upon cases titled as **“Waqar-ul-Haq V. State” (1985 SCMR 974)**, **“Bahadur V. Muhammad Latif” (1987 SCMR 788)**, **“Omar Daraz V. The State” (2004 SCMR 1019)** and **“Muhammad Afzal V. The State” (2012 SCMR 707)**.

09. The law has been laid down by the Hon’ble Supreme Court of Pakistan in a case titled as **“Mudassar Altaf and another V. The State” (2010 SCMR 1861)**, that *“It is also settled principle of law that the observations made by the superior courts, while dealing with question of bail, are intended only for that limited purpose. Mere mentioning the name of the accused in Column No.II while*

submitting challan by the police does not debar the courts to evaluate the material on record and finding of the police is not binding on the court and that while granting or refusing bail, the courts can take into consideration this aspect of the case. See Haji Inyat -ul-Haq's case (1988 SCMR 1743), Iqbalur Rehman's case (PLD 1974 SC 83) and Gul Ahmed's case (1997 SCMR 27)". It has further been held that "It is settled principle of law that ipse dixit of the police is not binding on the court. Courts are well within their rights to evaluate all the material which was placed before them. The meaning of word "opinion" according to Webster's Dictionary is as follows:-

"Opinion, according to Webster means: a view, judgment, or appraisal formed in the mind about a particular matter, a belief stronger than impression and less stronger than positive knowledge; a generally held view".

Reliance is also placed upon case titled as **"Mst. Qudrat Bibi V. Muhammad Iqbal and another"** (2003 SCMR 68), wherein it is held that, *"this Court in the case of Manzoor and 4 others v. The State (PLD 1972 SC 81) has held that ipsi dixit opinion of the Investigating Officer cannot be accepted to exonerate the accused from the commission of the offence. Surprisingly learned High Court as well as Sessions Judge ignoring the law laid down in this reported case accepted the opinion of the*

Investigating Officer expressed by him in favour of respondent". It has also been held in case titled as "Sardar Munir Ahmed Dogar V. The State" (PLD 2004 Supreme Court 822), that "opinion of the police ipso dixit is not acceptable even at the bail stage, as it has been held in the case of Manzoor (ibid). Contrary to it P.Ws. Muhammad Azam and Muhammad Sharif had categorically held him responsible for causing fatal injuries on the person of Abdul Ghani and Abdul Ghafoor deceased, therefore, no importance can obviously be attached to the police for the time being".

10. As far as argument of learned counsel for the petitioner / accused that no recovery has been effected from the accused is concerned, it is held by the Hon'ble Supreme Court of Pakistan in a case titled as "Sardar Munir Ahmed Dogar V. The State" (PLD 2004 Supreme Court 822), that "As far as non-recovery of incriminating weapons at the behest of petitioner is concerned, it has got no significance at this stage as because after the commission of the offence, immediate arrest of the petitioner could not take place as he was arrested on 31st May, 2003, after about three weeks from the date of incident. Similarly non-recovery of .222 rifle empties, with which allegedly as per the 'zimnees', he has fired, cannot be considered important to enlarge him on bail because the trial Court would answer this question after evaluating the evidence".

11. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Sher Ali alias Sheri V. The State"** (1998 SCMR 190), that *"It is now well-established law that a fugitive from law and Courts loses some of the normal rights granted by the procedural as also substantive law. It is also a well-established proposition that unexplained noticeable abscondence disentitles a person to the concession of bail notwithstanding the merits of the case the principle being that the accused by his conduct thwarts the investigation qua him in which valuable evidence (like recoveries etc.) is simply lost or is made impossible to be collected (by his conduct). He cannot then seek a reward for such a conduct (in becoming fugitive from law)"*.

12. The law has been laid down by Hon'ble Supreme Court of Pakistan in a case titled as **"Haji Gul Rehman V. Imran-Ud-Din and another"** (2009 SCMR 1179), that *"This court has already held that a ground of further inquiry should be based on a rational conclusion arrived at with reference to the peculiar facts of the case and not mere hypothetical and whimsical statement contrary to the material available on record. It was held that mere possibility of further inquiry which exists almost in every criminal case is no ground for taking the matter as one under subsection (2) of section 497, Cr.P.C. In the case of Haji Akbar Khan (supra), this Court affirmed the view that where*

allegations contained in the F.I.R., duly corroborated by the record, constitute offences of serious nature, such facts disentitle the accused from the concession of bail”.

13. There can be no escape from the fact that the petitioner / accused is nominated in the FIR with specific role of causing fire arm injury to one Zahid, who died due to said fatal shot on his head. The injured witness Rashid as well as two other eye-witnesses have nominated the accused with a specific role of causing fatal injury on head of the deceased. Challan has been submitted in the Court. There is sufficient material on record to connect the petitioner / accused with the crime. The offences fall under the prohibitory clause of section 497 C.r.P.C.

14. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon **“PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937”.**

15. It has been laid down by the Hon’ble Supreme Court in **2020 SCMR 937, 2020 SCMR 594, 2020 SCMR 1182, 2017 SCMR 325 and 2016 SCMR 1447**, that the accused is not entitled for the grant of bail after arrest in the offences falling

under the prohibitory clause of section 497 Cr.P.C. It has also been laid down by the Hon'ble Supreme Court in a case titled as **"Rehmat Ullah Vs. State"** (2011 SCMR 1332), that the Courts should not grant or cancel bail when the trial is in progress.

16. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out a case for grant of bail on the ground of further inquiry as envisaged under Section 497(2) Cr.P.C, consequently, instant bail petition stands dismissed.

17. Needless to mention that this is a tentative assessment, which shall not affect the trial of the case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal

Approved for reporting.