

HCJD/C-121  
ORDER SHEET

ISLAMABAD HIGH COURT  
ISLAMABAD

Crl. Misc. No. 617-B of 2020.

Muhammad Mumtaz.

*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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27.03.2020. Raja Khurram Shahzad, Advocate for the petitioner.  
Mr M. Kaboor Khattak, Advocate for the complainant.  
Mr M. Atif Khokhar, State Counsel.  
Mr Momin Khan, ASI with record.

The petitioner Muhammad Mumtaz son of Sultan has sought post arrest bail in case, F.I.R. No. 72, dated 12.02.2020, registered under sections 322/279/427/337-G of the Pakistan Penal Code 1860 (hereinafter referred to as "**PPC**") at Police Station Khanna, Islamabad.

2. The brief facts, as alleged in the FIR, are that the petitioner while driving rashly and negligently caused an accident and as result whereof the complainant's nephew namely, Musaffar Jamal was injured because he was hit by a passing truck. The nephew of the complainant succumbed to injuries in the hospital. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; it is an unfortunate occurrence; the instant case has been registered with malafide intention of the complainant in connivance with the police; the petitioner is innocent; the petitioner has not committed the alleged offences; no specific role has been attributed to the petitioner; the offences are not

attracted against the petitioner; the petitioner having a valid driving license; the petitioner has no criminal record; offences do not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner has been incarcerated for one and a half month; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner is not nominated in the FIR; the petitioner has been implicated in the instant case with malafide intention and ulterior motives; there is no direct or indirect evidence against the petitioner regarding the alleged commission of offences; the complainant is not an eye witness of the alleged occurrence; the petitioner was not known to the complainant; no identification parade has been conducted; no motive has been attributed to the present petitioner; involvement of the petitioner in the instant case is on the basis of speculation; hence prayed for the grant of post arrest bail.

4. The learned State Counsel assisted by the learned counsel for the complainant has appeared alongwith Momin Khan A.S.I. They have contended that; the petitioner has committed a heinous offence and therefore, does not deserve the concession of bail; there is enough evidence on record to connect the present petitioner with the commission of offences; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and the trial is about to commence; hence prayed for dismissal of the instant bail petition. They have placed reliance on the case titled "*Majid Naeem vs. The State and others*" [2011 SCMR 1227].

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

6. The petitioner is not nominated in the instant case. However, after recording supplementary statement, the petitioner was implicated in the case. Furthermore, the alleged occurrence had taken place on 08.02.2020, whereas the instant case was registered on 12.02.2020 i.e. after a lapse of four days. The delay in registration of the case has not been explained. Admittedly, the accident had taken place on a highway. Moreover, there is no allegation that the accident was deliberate. In the facts and circumstances of the case, the judgment of the august Supreme Court in the case titled "*Majid Naeem vs. The State and others*" [2011 SCMR 1227] is distinguishable. The incomplete report under section 173 Cr.P.C. has been submitted before the learned trial Court and till date charge has not been framed against the petitioner. The petitioner has been incarcerated for one and a half month. Investigation qua the petitioner has been concluded and further incarceration of the petitioner will not serve any useful purpose in the facts and circumstances of the present case. The role of the petitioner and his involvement calls for further probe.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus 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.50,000/- (Rupees fifty 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/\**