

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 774-B of 2011.

Malik Amjad Pervaiz

Vs

The State and another.

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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06) 14-2-2012. Raja Rizwan Abbasi Advocate,
for the petitioner.
Mr. Mazhar Akram Awan Advocate, for
respondent No. 2/complainant.
Mr. Muhammad Abid Raja DAG, for the
State.
Awais Muhammad SI, with record.

Malik Amjad Pervaiz, petitioner
herein, seeks post-arrest bail in case FIR
No. 233, dated 06-12-2009, Police Station
Bhara Kahu, Islamabad, U/Ss. 302/34 PPC.

2. Brief facts of the case are that the
complainant Muhammad Rafique lodged
the above said FIR stating therein that his
son Shahzad Rafique alongwith his friends
namely Raza Siddiqui, Malik Amjad, Malik

Faheem and Ehtasham Baig etc. had gone to attend engagement ceremony of another friend Mani Shah. On 06-12-2009 at 12.30 a.m. his son Shahzad informed his brother Zeeshan that he should come alongwith his maternal uncle to Abbasi Hotel situated at Bhara Kahu. When Zeeshan alongwith his maternal uncle went to the place of occurrence, they saw that Raza Siddiqui and Malik Amjad were beating Shahzad; Malik Faheem raised lalkara and Malik Amjad took out a pistol and fired at Shahzad, which hit at his abdomen. He was taken to the Hospital, but in the Hospital, he succumbed to the injuries.

3. Petitioner was arrested on 07-12-2009 and was refused post arrest bail by learned Addl. Sessions Judge, Islamabad vide order dated 23-12-2011. Hence, the present petition.

4. Learned counsel for the petitioner submitted that according to the police report, the occurrence was a 'sudden

incident'. The accused as well as the deceased were friends and the occurrence did not take place in the manner, as given in the FIR. It is further submitted that because of the said reason delay of seven hours was caused in lodging the FIR. The learned counsel further submitted that the car mentioned in the FIR, in which the deceased was taken to the Hospital, belongs to the petitioner, which shows that the petitioner had no enmity with the deceased. The learned counsel further submitted that the petitioner/accused is behind the bars for the last more than two years and trial has not been concluded; so on the basis of statutory ground, the petitioner is entitled to the concession of bail. In support of his arguments, the learned counsel referred to the case law, reported as 1983 SCMR 72, 1993 SCMR 427, 2002 SCMR 184, 2001 YLR 2076 [Lahore], 2002 YLR 3836 [Lahore], 2009 YLR 1000 [Karachi] and 1999 P Cr. L J 948 [Lahore].

5. On the other hand, learned DAG assisted by learned counsel for the complainant/respondent contended that the points raised by learned counsel for the petitioner require deeper appreciation of evidence, which is not possible at bail stage. Challan has been submitted; one PW has been examined and at this stage, grant of bail might prejudice the case of either of the parties. It was further submitted that the delay in conclusion of trial was not due to the prosecution, as on most of the occasions, co-accused was absent and application for exemption was filed by learned counsel for the co-accused. So, in these circumstances, on the ground of statutory period, the petitioner is not entitled to the concession of bail. In support of his contentions, the learned counsel referred to the case law, reported as 1996 P Cr. L J 704 [Peshawar], 1997 MLD 1336 [Lahore] and 1986 P Cr. L J 714 [Peshawar].

6. I have heard learned counsel for the parties and have also perused the record.

7. The petitioner/accused is behind the bars for the last more than two years and trial has not been concluded. The record shows that on most of the dates, co-accused Raza Siddiqui was absent and application for exemption was filed on his behalf. Although, in absence of said co-accused, evidence could be recorded, but leaving aside the same, on the basis of absence of co-accused, petitioner/accused can not be made to suffer. It is duty of the Court to ensure attendance of witnesses and if the witnesses are absent, the accused can not be penalized for that. Record shows that except on one occasion, when both learned counsel for the parties were absent, learned counsel for the petitioner/accused remained in attendance.

8. In the circumstances, without touching merits of the case, I accept this petition. The petitioner be released on bail,

provided he furnishes bail bonds in the sum of Rs.1,00,000/- (rupees one lac), with two sureties, in the like amount to the satisfaction of the learned trial Court.

(RIAZ AHMAD KHAN)
JUDGE

Tanveer Ahmed.

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