

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 439-B/2011

Asif Nawaz Khokhar
Versus
The State etc.

S.No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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16-08-2011

**Ch. Abdul Aziz Advocate for the petitioner.
Muhammad Zafar Khokhar Advocate, for
complainant.
Rao Abdul Ghaffar, standing counsel
Bashir S.I. with record.**

Asif Nawaz Khokhar, petitioner herein
seeks post arrest bail in case F.I.R. No.68/2010,
dated 09-03-2010, U/s 302, 34, 109 PPC, Police
Station Koraal, Islamabad.

2- Brief facts of the case are that the
complainant Abdul Rasheed on 09-03-2010,
lodged report alleging therein that he alongwith
his son Muhammad Riyyasat Habib were going
towards their house in car. When they reached
Laterarh Road, Nai Abadi, four persons riding
two motorcycles appeared and started firing at
them. According to complainant, four persons
included accused/petitioner, his brother Saqib
Nawaz, one Amir and another unknown person.
Allegedly, the fire-shots of petitioner as well as
other accused had hit the deceased son of the

complainant. The occurrence was witnessed by three persons. Son of the complainant was injured, but succumbed to injuries on the way to hospital. The petitioner was arrested on 27-04-2011. He was refused bail by the learned Additional Sessions Judge, Islamabad on 05-07-2011, hence the present petition.

3- Learned counsel for the petitioner contended that the petitioner had left for Dubai on 06-03-2010 from Peshawar Airport and on the fateful day, he was not in Pakistan. Learned counsel further contended that this fact can be verified from the passport, which contained the exit entry. The petitioner thereafter, came back to Pakistan on 19th of April 2011. Therefore, prima facie, no case exists against the petitioner and he is entitled to the concession of bail. Learned counsel in support of his contentions relied on 1997 SCMR 1829, 2011 SCMR 161 and 1978 SCMR 242.

4- On the other hand, learned counsel for the complainant contended that the accused/petitioner was directly charged in promptly lodged F.I.R. Admittedly, there was previous enmity between the parties. The occurrence was witnessed by three persons. The petitioner was directly charged and the plea of alibi was

manipulated. Learned counsel further contended that plea of alibi cannot be taken into consideration at bail stage, as the same would require recording of evidence and the same could be taken into consideration by the learned Trial Court. Learned counsel also contended that the accused/ petitioner remained absconder for long time and therefore, he is not entitled to the concession of bail. In support of his contentions, learned counsel relied on 1987 SCMR 788, 2004 SCMR 283, 2010 P Cr. L J 1386 and 1979 SCMR 101.

5- Learned standing counsel as well as I.O. present in the Court submitted that the accused/ petitioner was not present on the fateful day in Pakistan as he had earlier left for Dubai. The passport and other documents were verified by the police during investigation, but it was added that the petitioner had paid certain amount to a hired assassin and through him had committed the murder. It was because of this that Section 109 PPC was added.

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

7- As far as plea of alibi is concerned, no hard and fast rule can be made regarding the same. However, it would not be correct to say

that plea of alibi cannot be taken into consideration at bail stage. The plea of alibi can be considered, but it is to be dealt with on its own merits, keeping in view the facts and circumstances of each case. At bail stage, no final findings can be given regarding plea of alibi, as the same would require recording of evidence. Nevertheless, tentative assessment of the plea raised can be made and if it is found that the accused has succeeded in establishing an opposite version, then the case of the accused would become one of further enquiry. On that score, the accused/petitioner would become entitled to the concession of bail, but the plea of alibi would be finally determined by the trial Court at trial stage. In this respect, I have sought guidance from 1978 SCMR 242, 1975 SCMR 219 and 1997 SCMR 1829.

8- In the present case, the passport produced by the accused/ petitioner and verified by the prosecution shows that on the fateful day, the accused/ petitioner was not present in Pakistan. The prosecution has supported the case of the accused, as it was stated at the bar that the accused had committed the murder of deceased through hired assassins, which obviously means that the prosecution accepts the claim of the accused/ petitioner. There is also no evidence

connecting the accused/petitioner with the murder of deceased through hired assassins.

9- The contention of learned counsel for the complainant that the plea of alibi is manipulated one, cannot be decided at this stage, as the same would require recording of evidence. The finding regarding plea of alibi of the accused/petitioner would not be final, but at this stage, it makes the case of the accused/petitioner one of further enquiry and the accused/petitioner is therefore, entitled to the concession of bail.

10- As far as abscondance is concerned, if on merits the accused succeeds in making out a case of bail, then abscondance by itself would not be considered as hindrance in the grant of bail. In the circumstances, I accept this bail petition, the accused be released on bail, provided he furnishes bail bonds in the sum of Rs.1,00,000/- with two local sureties in the like amount to the satisfaction of learned trial Court.

(RIAZ AHMED KHAN)
JUDGE

APPROVED FOR REPORTING.

Wajid