

Form No: HCJD/C-121.

ORDER SHEET.**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**
JUDICIAL DEPARTMENT.

Crl. Misc. No.80-B/2014

Muhammad Tanveer

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.03.2014	<p>Mr. Imran Feroze, Advocate for the petitioner.</p> <p>Mr. Muhammad Fakhar Hayat Awan, Advocate for complainant of FIR.</p> <p>Mr. Muhammad Jahangir Khan Jadoon, Standing Counsel with Abdul Sattar, SI with record.</p>

Through the present bail petition, the petitioner seeks post arrest bail in connection with FIR No.41 dated 19.02.2013 u/s 302/34/109 PPC registered at Police Station, Koral, Islamabad.

2. As per facts narrated by the complainant in the above FIR, the petitioner along with other co-accused nameiy Imran and Tanveer, armed with Klashankove, came to the place of occurrence and tried to stop the complainant party from raising construction and upon resistance, all three accused went over the roof of the adjacent house from where, accused Imran made straight fire, which landed on the back side of the chest of one Khalid Farooq, who succumbed to injuries.

The petitioner filed petition for post arrest bail which was dismissed by the learned Additional

District & Sessions Judge, Islamabad (East), vide his order dated 16.01.2014.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. His co-accused participated in the occurrence, due to his firing, the deceased died. No specific role has been attributed to the present petitioner and the recovery made from him is fake, which was planted upon the petitioner. His case needs further inquiry and probe into the guilt of the petitioner meaning thereby that Section 497 (2) Cr.P.C. attracts in the present case. The present petitioner is behind the bars since his arrest, investigation is complete and Challan has been furnished in the Court. In support of his contentions, learned counsel has relied upon 2011 SCMR 902, 2012 YLR 1309, 2013 YLR 1225 & 2013 YLR 1433.

4. On the other hand, while entering appearance, learned counsel for the complainant has submitted power of attorney, which has been taken on record. He has vehemently opposed this bail petition on the ground that petitioner is directly charged in the present FIR. He is equally responsible for his act due to common intention with his co-accused Imran. He argued that petitioner is involved in a heinous offence and u/s 302/34 PPC.

vicarious liability is also upon him in view of application of Section 34 PPC. He further argued that elaborate sifting of evidence could not be made at the time of deciding bail application, but only tentative assessment of the same is to be made. He further argued that the present petitioner, due to his shared common intention to murder the deceased, would be disentitled for grant of bail in murder case u/s 302 PPC. In support of his contention, learned counsel has relied upon 2004 SCMR 1889, 1999 P. Cr. LJ 1 & 2007 Cr.LJ 387.

5. Learned Standing Counsel has mostly adopted the arguments as advanced by the learned counsel for the complainant. It is also alleged that petitioner being an associate of main accused cannot be allowed bail.

6. I have carefully heard the arguments, perused the record and the material available has also been scanned as well as authorities referred by both the sides.

7. I am of the opinion that inspite of the fact that present petitioner has been shown available at the scene of incident duly armed with Klashankove as argued by the prosecution, but yet, two incidents were narrated. Earlier, Imran & Rashid tried to possess over the disputed property when they

obtained stay order from the court. Later on, the present petitioner was cited in the FIR ignoring the fact that present petitioner reached at the place of incident with Klashankove and restrained them from construction. Later on, Imran fired the burst from Klashankove, which hit Khalid Farooq on his left shoulder, who there-after succumbed to injuries.

8. In the next episode, it is observed that throughout the allegations, no role has been attributed to the present petitioner except his presence at the scene of incident. The petitioner neither alleged to have fired in the air nor he facilitated any of the co-accused, nor made any Lalkara or extended threats of any kind. Therefore, mere presence of the present petitioner at the scene of incident creates doubt about vicarious liability. Ultimately, his role will have to be determined during trial after recording of evidence and the material available on record. Such role assigned to the present petitioner creates a reasonable doubt about his participation in the commission of instant offence.

9. Therefore, in my humble view, the petitioner cannot be detained further merely on the basis of such role assigned to him, which in view of prosecution story is a vicarious liability.

10. Allegedly, recovered Klashankove was not found loaded with bullets, which too, creates doubt about the involvement of the petitioner in the present case.

11. Since it is a matter, which require further probe into the guilt of the present petitioner, therefore, in my humble view, the petitioner deserves for grant of bail.

12. Moreover, co-accused namely Sajid Hussain Shah has already been granted bail by this Court vide order dated 09.12.2013 passed in Crl. Misc. No.685-B-2013.

13. For what has been discussed above, instant bail petition is allowed. Consequently, the petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees Two Lacs) with one surety in the like amount to the satisfaction of learned trial court.

14. Since the above observations are tentative in nature therefore learned trial court needs not to be influenced by the same.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran