

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.450-B/2019

Ali Raza

Versus

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.
	16.07.2019	Raja Muhammad Farooq, Advocate for the petitioner Mr. Sadaqat Ali Jahangir, learned State Counsel with Azhar S.I. Mr. Naseer Anjum Awan, Advocate for respondent No.2/complainant.

Through the instant criminal miscellaneous application, the petitioner, Ali Raza S/o Javed, seeks bail after arrest in case F.I.R. No.553, dated 10.12.2018, for offence under Sections 302/34 and 109 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Koral, Islamabad.

2. Earlier the petitioner's post-arrest bail petition was dismissed by the learned Additional Sessions Judge, Islamabad, vide order dated 21.06.2019.

3. Learned counsel for the petitioner, at the very outset, has taken the plea of *alibi* that the petitioner was not present at the time and place of occurrence; that in support of the petitioner's plea of *alibi*, he relied upon the documentary evidence i.e. Railway tickets by name, hospital treatment of co-accused, Zulfiqar at Karachi, bills and payments of stay at a hotel at Karachi, and bank transactions through A.T.M. at Karachi; that the documentary evidence shows that the petitioner had traveled to Karachi on 04.12.2018 and returned at 10:30 p.m. on 11.12.2018, while the alleged murder was committed on 10.12.2018 as revealed through the F.I.R. in question; that pursuant to the investigation conducted by the police, the petitioner was not

present at the time and place of occurrence and has falsely been implicated in this case; and that petitioner is behind bars since the date of his arrest and is no more required by the police for further investigation. Learned counsel has prayed for the petition to be allowed and for the petitioner to be released on bail.

4. Conversely, learned counsel for the complainant, assisted by learned State Counsel, while controverting the arguments of learned counsel for the petitioner on merits, contended that petitioner is accused of murdering the deceased in a promptly lodged report eliminating the possibility of consultation and deliberation; that being a broad daylight incident, the question of mistaken identity does not arise; and that autopsy report of the deceased and recoveries from the spot supports the ocular version and *prima facie* connects the petitioner with the commission of offence. On the plea of *alibi*, learned counsel contends that such a plea cannot be taken into consideration at bail stage, rather can be considered by the Trial Court in light of the evidence led by prosecution and defence during trial. Learned counsel further added that if such plea is allowed at this stage, it would amount to giving of a clear chit to the petitioner. Learned counsel prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. Criminal proceedings in this case were triggered off at the instance of Muhammad Saqib, the complainant, according to whom the occurrence took place on 10.12.2018. While lodging the F.I.R. the complainant alleged that on

10.12.2018, at about 7:30 a.m., his brother namely, Abdul Hameed was going towards F-8 *Kacheri* in order to get ad-interim bail from the Court of learned Additional Sessions Judge, Islamabad, in his vehicle bearing No.ABV-809. It was further reported that the complainant was standing/waiting for his brother, Abdul Hameed at a plaza situated in F-8 Markaz, Islamabad along with Shehbaz Hameed and Abdullah Saeed. When the complainant's brother reached near the plaza where his brother/complainant along with two others were standing/waiting, all of a sudden accused, Zulfiqar and Ali Raza, both armed with 30 bore pistols, and Awais armed with a *Kalashnikov*, appeared in front of the vehicle of the complainant's brother, and accused Zulfiqar and Ali Raza fired shots with their 30 bore pistols on the deceased/complainant's brother, which hit him and as a result, he succumbed to the injuries and died on the spot. After the murder of the complainant's brother/deceased, the accused persons, while sitting on a motor bike and a Suzuki Mehran car, decamped from the spot. Motive behind the occurrence was that co-accused, Muhammad Javed, wanted to falsely implicate the deceased in a murder case of his brother.

7. The record reveals that in this case accused/petitioner was charged directly by name in the first information report and the role ascribed to him was that he had made fire-shots upon the deceased with 30 bore pistol. As regards the plea of *alibi*, the police was of the dual view firstly, that the accused/petitioner and co-accused Zulfiqar were not present at the spot, but they had ingeniously and cunningly managed the murder of Abdul Hameed. It is well settled that the opinion of

the police is not binding upon Courts. However, in the case at hand, dual opinion as regards the presence of the petitioner at the time and place of occurrence, cannot be relied upon giving favour to the accused/petitioner at the bail stage especially when he was directly charged with the murder of the deceased by the complainant and eyewitnesses in a promptly lodged report eliminating the possibility of consultation and deliberation, and that being a broad daylight incident, question of mistaken identity does not arise. Therefore, the plea of *alibi* taken by the petitioner at the bail stage, cannot be evaluated. Mere possibility of further inquiry, which exists almost in every criminal case, is no ground for treating the matter as one under S.497(2) Cr.P.C. In my tentative estimation, after consulting with the available record, it is not possible to release the petitioner on bail given the fact that he has been accused of a heinous offence. Where the prosecution satisfies the Court that there are "reasonable grounds" to believe that the accused/petitioner has committed the crime falling in category of offences punishable with death, or imprisonment for life, or imprisonment for ten years, the Court must refuse bail. The remarks given in the post-mortem report of the deceased, Abdul Hameed, appended with the record shows that *"he was died due to multiple firearm injuries which caused severe damage to multiple vital organs of body with its major blood vessels, which caused excessive bleeding and loss of blood and caused death. All the injuries and damages are ante mortem which are sufficient to cause death."*

8. The autopsy report of the deceased and recoveries from the spot supports the ocular version and *prima facie* connects the petitioner

with the commission of offence. Therefore, the petitioner is not entitled to the concession of post-arrest bail.

9. In view of the above, the bail petition is dismissed. After the murder of the complainant's brother, the accused/petitioner along with co-accused Zafar went into hiding and after their arrest, the trial to their extent has been commenced. As such, the learned Trial Court is directed to conclude the trial at the earliest.


Qamar Khan*

(MIANGUL HASSAN AURANGZEB)
JUDGE