

Form No: HCJD/C-121  
**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Crl. Misc. No.418-B of 2021**

**Abdul Mannan**  
**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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03.	20.05.2021	Mian Asad Hayat Awan, Advocate for the Petitioner. Mr. Jan Muhammad Khan, Advocate for the Complainant. Mr. Shehbaz Shah, learned State Counsel. Dost Muhammad, ASI
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Through the instant bail petition, the petitioner seeks bail after arrest in case FIR No. 17/2021, dated 17.01.2021, offence under Sections 302, 324, 148, 149, 109, 337-F(v), 337-D, 337-A(ii), 337-A(i) & 337-F(i) P.P.C registered at Police Station Bani Gala, Islamabad.

2. It is alleged in the FIR that petitioner / accused alongwith co-accused while armed with weapons attacked upon the complainant party and inflicted injuries to Mst. Sadia Bibi, Rakiban Bibi, Kamir Shahzad, complainant Ishtiaq Hussain and one Zahoor, whereas injured Mst. Sadia Bibi succumbed to said injuries. Hence, the instant FIR.

3. On 19.01.2021, Muhammad Nauman S/o Abdur Rauf accused of FIR has also submitted an application for registration of cross version, wherein he has stated that the complainant party of the FIR has attacked on the accused party.

Consequently, Muhammad Nauman got injured, Medico Legal Report of injured Nauman is available in police record.

4. Learned Counsel for the Petitioner /accused contended that the petitioner has falsely been implicated through concocted story in the above mentioned case with malafide intention by the complainant; that he is juvenile and a student of secondary school; that he is a law abiding citizen of Pakistan and has never been involved in any criminal litigation; that there is no apprehension of his abscondence or tampering with the prosecution evidence; that he was arrested on 09.03.2021 and has undergone three days physical remand; that it is a case of cross version which establishes that attack was launched by the other side; that the factum of wider net is clear from the contents of FIR where the complainant has not spared any member of family of the petitioner; that contents of the FIR itself reveal that story of the FIR is concocted one and is not truly narrated as per facts and there is a clear delay in lodging of FIR. Lastly, learned Counsel for the petitioner / accused prayed for acceptance of his bail petition.

05. Conversely, learned State Counsel assisted by the learned Counsel for the Complainant has controverted the arguments advanced by the learned Counsel for the petitioner/accused and stated that

petitioner/accused is specifically nominated in the FIR; recovery of *Danda* has been effected from him; offences fall under the prohibitory clause of Section 497 Cr.P.C; police has rejected the cross version of the accused party; sufficient incriminating evidence is available against the petitioner/accused, hence he is not entitled for grant of bail after arrest.

06. I have heard the arguments advanced by learned counsel for the petitioner, learned State Counsel, learned Counsel for the complainant and perused the record with their able assistance.

07. There is no allegation against the petitioner/accused of causing any injury to Mst. Sadia Bibi (deceased); the first allegation against him is that he along with Sabiha Bibi caused *Danda* blow upon Kamir Shahzad, resultantly, his right leg was fractured; second allegation against him is that he along with Sabiha Bibi inflicted *Danda* blows upon complainant which hit on his back and the third allegation against him is that he alongwith Sabiha Bibi gave *Danda* blows to Zahoor and his right arm was fractured.

08. In Medico Legal Report of Ishtiaq Hussain complainant, there is only an Abrasion shown on the lower back of the injured/complainant. MLR of Zahoor Ahmad shows that there is a Trauma to left Forearm as well as fracture of left ulna/arm. According to allegations leveled in FIR, the

injuries of *Danda* blows inflicted upon the said three injured were jointly inflicted by the petitioner and his sister Mst. Sabiha Bibi.

09. According to the contents of FIR, there is allegation of causing fracture on the right arm of Zahoor Ahmad, whereas in the Medico Legal Report (MLR) it has mentioned that fracture of left arm was caused. So, there are material contradictions in the ocular and medical evidence.

10. The complainant has nominated two brothers, sister, father and mother alongwith four uncles and cousins of the petitioner as accused in the FIR. He has tried to entangle the whole family in the case.

11. Police has entered/recorded the cross version of the accused party in the case and also added Sections 337-A(i), 337-F(iii), 148 & 149 PPC on the basis of MLR of Nauman S/o Abdur Rauf who is an accused in the FIR but as per cross version he received injuries by the complainant party. Subsequently, the police has negated the cross version. It is admitted by the Investigating Officer in police record that Nauman S/o Abdur Rauf received injuries in the occurrence but the stance of I.O is that he received injuries by the co-accused / his companions named in the FIR. However, police opinion is not supported by any evidence. This fact is not mentioned by any witness in the

statement recorded U/s 161 Cr.P.C that Nauman accused got injured by the hands of other members of accused party / his companions, as it is a case of cross version.

12. Question of aggression is still to be determined. In a reported case titled as **"Sohailb Mehmood Butt V. Iftikhar-ul-Haq (1996 SCMR 1845)"**, the Hon'ble Supreme Court while providing guidelines for the exercise of jurisdiction in bail matter in the cases of two counter versions arising from the same incident held as under;

*"Now what would constitute as sufficient grounds for further inquiry would depend on the peculiar facts of each case and no hard and fast rule can be laid down for that purpose. Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial Court subsequently after evaluation of evidence. Broadly speaking, the condition laid down in clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further inquiry into his guilt which means that the question would be such which has nexus with the result of the case and may show or tend to show that accused is not guilt of the offence with which he charged. For example, if accused is charged for offence*

***under section 302, P.P.C. but there are grounds for further enquiry which may show that he may not be convicted of the charge under section 302, P.P.C. but may be acquitted or convicted for a lesser offence.”***

***“In the counter-versions arising from the same incident, one given by complainant in F.I.R and the other given by the opposite party case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed”.***

Further reliance in this regard can also be placed on the case titled as **“Mehmood Akhtar and another V. Haji Nazir Ahmad and 4 others (1995 SCMR 310)”**.

13. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon *PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.*

14. It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail after arrest 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. Reliance is placed on a case reported as *"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)"*.

15. It is held by the Hon'ble Supreme Court in a case titled as *"Zaigham Ashraf Vs. The State and others" (2016 SCMR 18)* that *"to curtail the liberty of a person is a serious step in law,*

*therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground."*

16. Investigation in the case has been completed and the petitioner/accused is no more required for the purpose of investigation. He is previously non-convict and is behind the bars for the last more than 02 months. Trial of the petitioner / accused has not seen any fruitful progress as yet, therefore, his further incarceration in jail would not serve any purpose.

17. A tentative assessment of record shows that present petitioner has made out a case of further inquiry.

18. In view of above, instant petition is accepted and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs. 100,000/- (One Hundred Thousand only) with



one surety each in the like amount to the satisfaction of learned trial Court.

19. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)  
JUDGE

Ahmed Sheikh\*