

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

Criminal Misc. No. 193-B/ 2020
Muhammad Ammad Haidri
Vs
The State, etc

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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02.06.2020	Petitioner in person with Malik Shahid Mehmood Kandwal, Advocate, Mr. Muhammad Bilal Ibrahim, State Counsel, Mr. Hanaan Din Chaudhary, Advocate for Respondent No.2/complainant, Arshad Ali and Mukhtar ASIs, with Record.
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Through the instant petition, petitioner (Muhammad Ammad Haidri) has prayed for pre-arrest bail in case FIR No.08 dated 06.01.2020 under section 337-A(ii)/34 PPC, registered at Police Station Karachi Company, Islamabad.

2. The record appended with the petition reveals that earlier pre-arrest bail petition of the petitioner was rejected by the learned Additional Sessions Judge/GBV Court East/West, Islamabad vide order dated 22.02.2020.

3. Learned counsel for the petitioner contends that there is delay of 17 days in lodging of FIR; that the parties are closely related *inter-se* and are in multiple civil litigation over ancestral house; that the story narrated smacks *malafide* on the part of complainant which is evident from the fact that as per prosecution, police reached the place of occurrence where the petitioner had been present but no weapon was recovered from his possession at that time; that the complainant and the co-accused/mother of the present petitioner are real sisters; that mother of the petitioner got registered a FIR regarding

kidnapping of the present petitioner; that bail to co-accused has already been granted, therefore, in presence of admitted rift over the dispute of ancestral property coupled with multiple civil litigation, case of the petitioner calls for further inquiry and entitles him to the extra ordinary concession of pre-arrest bail.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that there is no delay, as alleged, in reporting the matter to the police while the FIR stood registered soon after the receipt of medico legal report; that the motive, as alleged, is an afterthought and concocted just to evade the arrest; that petitioner is specifically nominated for causing a sharp edged injury on the vital part of the body of complainant; medico legal report confirms the nature of injury; petitioner is involved in other cases of like nature. On the ground of motive, learned counsel for the complainant submitted that the complainant as well as mother of the present petitioner are real sisters and their claim against the ancestral house is one and the same, therefore, there is no civil dispute between the complainant and the petitioner or his mother/co-accused as attempted to made out.

Learned State Counsel added that the mode and manner in which the occurrence allegedly took place, *prima facie*, attracts Section 324 PPC and that the recovery of crime weapon i.e. Churri is to be effected, therefore, petitioner is not entitled to the concession of pre-arrest bail.

5. Arguments heard, record perused.

6. According to the contents of FIR, on 21.12.2019, when the complainant had been present in House No.37, Street No.82, G-8/1, Islamabad in order to see her mother, present petitioner along with co-accused/his mother Sadia Saher, emerged at the scene and launched an attack. In that pursuit, present petitioner on the instigation of his mother/co-accused inflicted a Churri blow on the forehead of the complainant due to which she sustained an injury.

7. Record reveals that the parties are closely related to each other. The co-accused Sadia Saher is real sister of the complainant while it is an admitted position that there exists rift *inter se* the legal heirs that includes the complainant and co-accused Sadia Saher over inheritance of a house. The two FIRs i.e. FIR No.237 dated 12.06.2018 and FIR No.05 dated 01.01.2020 were got registered by Sadia Saher co-accused against his brother Waqar Ali and others while said Waqar Ali also lodged an FIR No.298 dated 14.06.2018 against Sadia Saher and others. Besides this, civil litigation is also going on between the parties. The main cause of the present and of other multiple FIRs among the legal heirs/co-owners is a dispute over ancestral house i.e. House No.37, Street No. 82, Sector G-8/1, Islamabad, therefore, the case of the petitioner in that eventuality becomes one of further inquiry as held in "Muhammad Anwar Khan Vs The State and another (2020 PCr.LJ Note 23) and Muhammad Shafi and 2 others Vs The State (2003 YLR 2011)".

8. The motive is always considered a double edged weapon and when there is admitted litigation between the parties, the possibility of element of malice and *malafide* cannot be ruled out.

9. As regards the submission that corpus of the petitioner is essential for effecting recovery of crime weapon i.e. Churri, record reveals that the alleged occurrence took place on 21.12.2019 while after the passage of more than five months, the recovery of crime weapon would be of a little legal consequence as laid down by the Hon'ble Apex Court in a pre-arrest bail in hurt case of "Malik Muhammad Aslam Vs The State and others" (2014 SCMR 1349). It was graciously held that:-

‘that a hatchet is yet to be recovered from the petitioner’s custody and, thus, the petitioner’s physical custody is required by him for the said purpose. In this connection we have noticed that the occurrence in this case had taken place on 16-10-2012, i.e. exactly three months ago, during which period any blood available on the petitioner’s hatchet must have disintegrated leaving the proposed recovery to be of little legal consequence. In this view of the matter we have not felt persuaded to deprive the petitioner of his liberty merely to facilitate the investigating officer to go through a formality which formality is not likely to serve any beneficial purpose for the prosecution. In this backdrop the intended arrest of the petitioner by the local police has not been found by us to be above board.”

10. The offence alleged entails punishment upto five years and does not fall within the ambit of prohibitory clause of section 497 of the Criminal Procedure Code. The petitioner is of tender age, a student of A Level

and is not a previous convict. The pre-requisites for exercising extra-ordinary discretion, in the light of facts and circumstances of the instant case, are available.

11. In view of above, instant criminal misc. petition is allowed, petitioner Muhammad Ammad Haidri is admitted to pre-arrest bail subject to furnishing of fresh bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousands) to the satisfaction of learned Trial Court.

12. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE