

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 225-B of 2020.

Saddam Hussain, etc.
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.04.2020. Mr Sher Afzal Khan Marwat, Advocate for the
petitioners.
Raja Muhammad Farooq, Advocate for the complainant.
Mr M. Atif Khokhar, State Counsel.
Mr Ghulam Rasool, S.I/I.O. with record.

The petitioners namely, Saddam Hussain son of Siraj and
Muhammad Shah son of Sahib Shah have sought post arrest bail in case
F.I.R. No. 85, dated 16.02.2020, registered under sections
302/324/427/148/149 of the Pakistan Penal Code 1860 (hereinafter
referred to as "**PPC**") at Police Station Koral, Islamabad.

2. The brief facts, as alleged in the FIR are that on 16.02.2020,
when the complainant alongwith his sons and nephews was present at his
plot, the present petitioners alongwith other co-accused/accomplices
came at crime scene and they were armed with weapons. It is further
alleged that the complainant's nephew namely, Raja Faisal Ismail was
fatally injured and he later could not survive. Hence the instant FIR.

3. The learned counsel for the petitioners has contended that;
there is delay of three hours in registration of the FIR; delay has not been
explained; it is a cross version case; investigations qua the petitioners

have been completed and they are no more required for the purposes thereof; the petitioners have been incarcerated for almost two months; the petitioners have been falsely involved in the instant case with ulterior motives; recovery proceedings are fake; the petitioners are not hardened and desperate criminals; the co-accused of the petitioners have been enlarged on bail and the case of the present petitioners is at par with them; keeping in view the rule of consistency, the petitioners are also entitled to the concession of bail; the petitioners have no concern whatsoever with the alleged offences; no incriminating material was recovered from the petitioners; offences are not attracted against the present petitioners; the petitioners have no criminal record; there is no chance of abscondance of the petitioners or tampering with the prosecution evidence; recovery if any is fake and planted; scope of post arrest bail is wider; the case against the petitioners falls within the ambit of further inquiry; the FIR is false and fabricated; allegations against the petitioners are false, frivolous and baseless; case against the petitioners falls within the ambit of section 497(2) of Cr.P.C.; there is no direct or indirect evidence against the petitioners regarding the alleged commission of offences; no specific injury has been attributed to the present petitioners; no motive has been attributed to the present petitioners. Hence prayed for the grant of post arrest bail. Reliance has been placed on the cases titled *"Khiyal Saba and another vs. The State and others"* [2020 SCMR 340], *"Muhammad Ramzan vs. The State and others"* [2016 SCMR 2046], *"Khalil Ahmed Soomro and others vs. The State"* [PLD 2017 S.C. 730], *"Wajid Ali vs. The State and another"* [2017 SCMR 116] and *"Muhammad Iqbal alias Bala Bandri vs. The State and others"* [2017 SCMR 1939].

4. The learned State Counsel assisted by the learned counsel for the complainant has appeared alongwith Ghulam Rasool S.I. They have argued that; the petitioners are nominated in the FIR; specific role has been attributed to the present petitioners; recovery has been affected from the petitioners; there is sufficient incriminating evidence on record to connect the present petitioners with the commission of the alleged offences; it is obvious from the medical reports that the offences are attracted. Hence prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The petitioners are nominated in the FIR. They have been attributed specific roles. It is alleged that the petitioners and other co-accused were aggressors. Neither the petitioner nor the co-accused had sustained serious injuries and, therefore, it cannot be ruled out at this stage that the other party had no arms. The allegations are regarding offences involving violent acts. It is inconsequential that no injury to the deceased was attributed to the petitioners. Moreover, one of the petitioners namely, Muhammad Shad had sought to register cross version of the case admitting his presence at the crime scene. Recoveries have been affected from both the petitioners. There is sufficient incriminating material brought on record to, prima facie, indicate involvement of the petitioners in commission of the alleged offences. Admittedly, the offence mentioned in the FIR falls within the ambit of the prohibitory clause. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial of the case is expected to be completed expeditiously. The learned counsel for the petitioners, despite his able

assistance, was not able to persuade this Court that a case is made out for extending the concession of bail. Moreover, at this stage deeper appreciation of evidence is not permissible. In the facts and circumstances of the instant petition, this Court is not inclined to extend the concession of bail at this stage because the nature of allegations is such that it cannot be ruled out that the petitioners, if released on bail, may intimidate the witnesses or abscond. It is, however, expected that the learned trial Court will conclude the proceedings expeditiously. The prosecution as well as the petitioners will endeavour to conclude the trial at the earliest.

7. For what has been discussed above, this Court is satisfied that a case is not made out for the grant of bail in favour of the petitioners and, therefore, the instant petition is accordingly ***dismissed***.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

CHIEF JUSTICE

*Asad K/**