

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

Criminal Misc. No. 926-B/2020  
Muhammad Riazul  
Versus  
The State, etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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10.09.2020	Petitioner on ad-interim bail with Qazi Khalil ur Rehman, Advocate, Syed Shahbaz Shah, State Counsel, Mr. Farhat Ullah Jan, Advocate for respondent No.2, Ghulam Mustafa SI with record.
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Through the instant petition, petitioner has prayed for pre-arrest bail in FIR No.271 dated 18.06.2020 under Section 324/34 & 337-D PPC, registered at Police Station Khanna, Islamabad.

2. Briefly, the allegations, set-forth in the FIR are that on 16.06.2020 at about 05:00 a.m, four persons, boarding on two motorcycles having .30 bore pistols chased Kaleem Sarfraz, son of the complainant, who was also on his way on a motorcycle; that when said Kaleem Sarfraz reached in Mohallah Gilgitti, said persons made three fire shots but the same proved abortive; that thereafter, leaving motorcycle in an open plot, Kaleem Sarfraz tried to escape but was again chased by the assailants who then caught hold of him; that accused Ehtisham alias Shamo fired a shot with .30 pistol which passed through the belly of Kaleem Sarfraz while the second shot fired by the petitioner proved abortive; Kaleem Sarfraz soaked in the blood and fell down, where-after the assailants fled away and the inhabitants of the nearby locality shifted the injured to the hospital.

The motive as alleged is that earlier complainant side got registered an FIR against the assailants regarding murder of brother in law of the complainant namely Arshad Mehmood.

3. Learned counsel for the petitioner contends that there is a delay of about two days in lodging the FIR; that the malice and *malafide* on the part of complainant is established on record as the scene of crime was changed from one police station to another; that number of inhabitants of the vicinity testified that no occurrence had taken place at the alleged scene of crime; that ineffective fire shot is attributed to the petitioner; that previous enmity between the parties is admitted; that co-accused have been allowed bail, therefore, petitioner deserves the same treatment; that there is no chance of tempering with the prosecution evidence, therefore, petitioner is entitled to the concession of pre-arrest bail. Learned counsel placed reliance upon case laws reported as **Asif Iqbal V. The State and others (2018 Cr.LJ Note 170)**, **Naveed Masih V. The State and another (2011 PCr.LJ 1198)**, **Javed Akhtar V. The State (2009 MLD 88 Lahore)**, **Rehan V. The State (2009 SCMR 181)**, **Muhammad Saleem alias Papoo V. The State and another (2007 PCr.LJ 953 Lahore)** and **Zahoor Ahmad V. State and another [PLJ 2009 Cr.C (Lahore) 47]**.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that the parameters for pre and post arrest bail are entirely distinct and in the former, possibility of false implication is to be established

which is lacking in the present case; that petitioner is specifically nominated in the FIR with role of causing a fire shot with .30 bore pistol; that the delay has been explained; that the recovery is to be effected; that petitioner is involved in other cases of like nature, therefore, not entitled to extra-ordinary concession of pre-arrest bail.

5. Arguments heard, record perused.

6. The perusal of record reveals that petitioner is specifically nominated in the FIR with the allegation of causing a fire shot with .30 bore pistol which although proved abortive while the fire shot of co-accused Ehtisham passed through the belly of the injured. The MLR corroborates the version of the complainant, whereby exit and entry wounds were observed and the kind of weapon is mentioned as fire arm. The injured in his statement has implicated the petitioner, while PWs Abbas and Safia in their respective statements testified the receipt of fire shot injury by the injured in a vacant plot. The recovery of crime weapon is to be effected from the petitioner. The allegations, *prima facie*, attract Section 324 PPC which falls within the ambit of prohibitory clause of Section 497 Cr.P.C.

7. The petitioner has criminal record and the details of cases registered against him are as under:-

- i) FIR No.386/2017, u/s 427, 506(ii), 337-H(ii), 148, 149 PPC,
- ii) FIR No.223/2016 u/s 427, 430, 186, 353, 34 PPC,
- iii) FIR No.120/2016 u/s 506(ii), 447, 511 PPC,
- iv) FIR No.243/2012 u/s 337-F(ii)/34 PPC,

- v) FIR No.242/2012 u/s 379, 341, 427, 148, 149 PPC,
- vi) FIR No.395/2007 u/s 224, 353, 186, 147, 149 PPC,
- vii) FIR No.225/2018 u/s 447, 506(ii), 148, 149 PPC,
- viii) FIR No.481/2018 u/s 148, 149, 506, 511, 447, 427 PPC,
- ix) FIR No.244/2019 u/s 447, 511, 506, 395 PPC,
- x) FIR No.260/2007, u/s 452, 148, 149, 506(ii), 337-H (ii) PPC
- xi) FIR No.454/2019, u/s 506 (ii), 337-H(ii), 148, 149, 447, 511 PPC
- xii) FIR No.61/2017, u/s 324, 452, 427, 148, 149 PPC

All registered at P.S. Bharakahu, Islamabad.

8. The Hon'ble Supreme Court of Pakistan in *'Gulshan Ali Solangi and others V. The State through P.G. Sindh'* (2020 SCMR 249) declined the pre-arrest bail to an accused who was involved in seven other criminal cases by expounding the law that relief of pre-arrest bail is for innocent people to save them from the horrors of abuse of process of law with a view to protect their dignity and honour.

9. The ground that the fire shot proved abortive which does not attract application of Section 324 PPC in the circumstances of the instant case, is not worthy of credence as one of the fire shots attributed to co-accused Ehtisham hit the injured on the vital part of the body while on the same sequence, the fire shot alleged to have been made by petitioner proved abortive but were fired with intention to kill. The Hon'ble Apex Court

in **Sheqab Muhammad V. The State and others** (Criminal Petition No.591 of 2020), has graciously held that once the trigger is pressed and the victim is effectively targeted 'intention or knowledge' as contemplated by the section 324 PPC is manifested. It was held that:-

*"he cannot be released on bail in the absence of any consideration within the purview of subsection 2 of section 497 of the Code ibid. Similarly, murderous assault as defined in the section ibid draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted 'intention or knowledge' as contemplated by the section ibid is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. Exercise of discretion by the High Court being well within the bounds of law calls for no interference. Petition fails. Leave declined."*

10. As far as delay of about two days in lodging the FIR is concerned, apparently the same had been sufficiently explained by the complainant and yet, if any impact of the same is on the case, that is job of the trial Court to consider it at trial stage and merely on this ground bail cannot be allowed. In like case, the Hon'ble Supreme Court of Pakistan in a Judgment reported as **Mazhar Iqbal V. The State and another** (2010 SCMR 1171) had enunciated a law where two days' delay was there, the learned High Court granted bail but the same was cancelled by the Hon'ble Supreme Court of Pakistan by not considering it sufficient for grant of bail in paragraph No.3 of the said judgment it was held that:-

*"In the present case the explanation of the delay in lodging the FIR, furnished by the complainant can be examined by the trial*

Court at the appropriate stage when the evidence is recorded in the case and the same is also subject to cross examination. Thus in the peculiar circumstances of the instant case, this require deeper appreciation of the evidence which cannot be undertaken at this stage.”

11. Moreover, in the present case, there is no denial that an FIR regarding the murder of brother in law of the complainant has already been registered against the accused party, who alleged to have concocted a false story as a counter blast while the complainant alleges that an attempt has been made to refrain them from pursuing the murder case. Thus, the motive, in the attending circumstances of the case, appears to be a double edged weapon and cannot be pressed into service.

12. The case laws relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

13. In view of above, petitioner has not been able to make out a case warranting exercise of extra-ordinary discretion, therefore, instant bail petition is accordingly dismissed.

14. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not affect/influence trial of the case in any manner.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran