

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Criminal Miscellaneous No.64/2020**

Azhar Mehmood and another  
Vs.  
The State and another.

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	21.02.2020	Rao Abdur Raheem, Advocate alongwith petitioners in person. Ch. Wajid Hussain, counsel for respondent No.2. Mr. Zohaib Hassan Gondal, State Counsel. Iftikhar Ali, Sub-Inspector, Police Station Banigala, Islamabad.

Through the instant petition, the  
  
petitioners, namely Azhar Mehmood son of  
  
Maqsood Hussain and Sagheer Ahmed son  
  
of Mehram Khan have sought bail before  
  
arrest in cross version dated 13.11.2019 of  
  
case F.I.R No.323/2019, dated 03.11.2019  
  
registered under sections 337-F (ii), 337-A  
  
(ii), 506(ii), 109, 148, 149 of Pakistan Penal  
  
Code, 1860 (hereinafter referred to as  
  
“PPC”) at Police Station Bani Gala,  
  
Islamabad.

2. Brief facts as narrated in the FIR are  
  
that on 03.11.2019, the complainant

alongwith his accomplices went to his land where he saw that one Arsalan, Ehsam, Ikraam, Waqas, Tahir Habib and Khalil were present and trying to occupy the land. It was further alleged that at the relevant time Arsalan was ploughing field. In the meanwhile, Waqas and Arsalan made straight fires upon Gulzarin and injured him. Khalil and Ehsam also made indiscriminate firing upon the complainant and his accomplices. Hence the instant FIR.

3. It is pertinent to mention here that a cross version was recorded on the written complaint of Ikraam Saeed, wherein it has been alleged that on the relevant day at about 09:30 a.m, the accused, namely Arshad and Mehmood armed with 30-bore pistols, Saghir and Azhar armed with Ax, Muhammad Zareen, Arsalan, Hamad and Shah Zaib while armed with Dandaas came towards them. Manzoor Ahmed raised a Lalkara, upon which Arshad opened fire at

them with his firearm. The brother of Arsalan, who was ploughing, was given severe beating by the accused persons. The other accused persons mentioned hereinabove have alleged attributed injuries to them.

4. The learned counsel for the petitioners has contended that; the latter have been falsely involved in the instant case with malafide intention and ulterior motives of the complainant of the cross version; the petitioners are victims of illegal acts of the complainant party, who caused multiple injuries to the petitioners; there is delay of almost ten days in registration of the instant case; story as narrated in the FIR is false, frivolous and vexatious; the crucial element of aggressor and aggrieved party will be decided by the learned trial Court during the course of recording of evidence; the medical report is negating the version of the complainant party; offences are not

attracted against the petitioners; the petitioners are innocent; the petitioners have no concern whatsoever with the alleged offences; the petitioners are previously non-convict and non-record holders; there is no chance of abscondance of the petitioners or tampering with the prosecution evidence; the offences do not fall within the prohibitory clause of section 497 of Cr.P.C. The learned counsel has prayed for the confirmation of the pre-arrest bail already granted to them.

5. Conversely, the learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Iftikhar Ali, S.I. They have opposed the confirmation of bail. It has been contended that; all the offences are cognizable in nature; the pre-arrest bail of the petitioners was dismissed by the learned Additional Sessions Judge (East) Islamabad vide order, dated 17.01.2020; the conduct of the petitioners

brings their case within the exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 of Cr.P.C.; the petitioners alongwith their accomplices inflicted grievous injuries to the complainant party; the petitioners are nominated with specific roles; recovery is yet to be made. It has been alleged that in the circumstances, the petitioners are not entitled to the concession of bail at this stage and therefore, prayed for dismissal of the instant bail petition.

6. Arguments of the learned counsels for the parties have been heard and record perused with their able assistance.

7. Perusal of the record reveals that the present petitioners have been involved in the instant case after recording of cross version of the complainant, namely Ikraam Saeed son of Muhammad Saeed. The allegations against the petitioners are that they have caused injuries to the

complainant of cross version. The offences do not fall within the prohibitory clause of section 497 of Cr.P.C. Perusal of the record further reveals that some of the accomplices of the present petitioners have been extended the concession of bail, therefore, the petitioners are also entitled to the same relief, keeping in view the rule of consistency. Both the parties have taken the stance that they have been attacked and they are not the aggressors. This crucial fact will be determined after the recording of evidence by the learned trial Court that which of the party was the aggressor. All these factors make it a case of further probe. The petitioner no.1, is the complainant of F.I.R No.323/ 2019, wherein he has nominated the complainant of the cross version, namely Ikraam Saeed and other accomplices as accused. Recording of cross version and involving the present petitioners as accused, the malafide on the

part of Ikraam Saeed cannot be ruled out at this stage. Confirmation of pre-arrest bail is indeed distinguishable from granting a post arrest bail. As already noted it cannot be ruled that the petitioners may have been named in the cross version, so as to humiliate and harass them thus seeking their arrest for ulterior motives. Therefore, a case is made out for confirmation of bail in the light of the principles laid down by the august Supreme Court in the case titled *"Rana Muhammad Arshad vs. Muhammad Rafique and another"* [PLD 2009 S.C. 427]. This Court is, therefore, inclined to confirm pre-arrest bail already granted vide order, dated 28.01.2020 to the petitioners.

8. For what has been discussed above, the instant petition is ***allowed*** and the pre-arrest bail dated 28.01.2020 already granted to the petitioners is ***confirmed***, on the same bail bonds already furnished by the petitioners.

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

**(GHULAM AZAM QAMBRANI)  
JUDGE**

*Rana.M.Ift\**