

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Criminal Misc. No. 1331-B of 2021

Ashfar Ahmed

Versus

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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04.01.2022	Mr. Qaiser Imam Ch., Advocate for the petitioner / accused. Mr. Adil Aziz Qazi, Advocate for the complainant. Mr. Farhad Ali, State Counsel. Fakhar Abbas, S.I.
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Through the instant bail petition, the petitioner seeks bail after arrest in case FIR No. 270/2021, dated 14.03.2021, offence under Sections 302, 324, 447, 511, 337-F(ii), 148 & 149 P.P.C, registered at Police Station Koral, Islamabad.

02. It is alleged that the petitioner along with co-accused has attacked on the complainant party and made firing, consequently one Abdul Salam succumbed to the injuries, whereas Siraj-ul-Haq and

Muhammad Shafique got injured, hence the instant FIR.

03. Learned Counsel for the petitioner / accused *inter alia* contends that the petitioner has falsely been implicated through concocted story in the above mentioned case with malafide intention by the complainant; he is a law abiding citizen, and has never been involved in any criminal litigation; there is no apprehension of his abscondence or tampering with the prosecution evidence; he was arrested on 23.06.2021; there are material contradictions between the medical and ocular evidence; 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; contents of police report itself reveal that story is concocted one and is not truly narrated as per facts and there is a clear delay in lodging of report, hence he is entitled for grant of bail after arrest.

04. 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 has stated that petitioner / accused is specifically nominated in the FIR; recovery of kalashnikov has been effected from him; offences fall under the prohibitory clause of Section 497 Cr.P.C; sufficient incriminating evidence is available against him, hence he is not entitled for grant of bail after arrest.

05. 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.

06. The petitioner / accused is specifically nominated in the FIR; he made direct firing with Kalashnikov on the chest of Abdul Salam who succumbed to the injuries; during the course of physical remand, Kalashnikov has been recovered; eye-witnesses including the injured witnesses have implicated the petitioner / accused for committing murder / Qatl-e-Amd of Abdul Salam; challan in the

case has been submitted; trial has been started and learned trial Court has recorded the statements of five PWs.

07. Co-accused having different role was allowed bail after arrest by this Court vide order dated 29.10.2021; direction has been given in the said order for the completion of trial within a period of three (03) months; it is further directed in the said order that if any accused who have been released on bail after arrest do not appear on any date of hearing, their bail be recalled, conclude the trial in all respects and compliance report be furnished to Additional Registrar (Judicial) of this Court.

08. On 29.01.2022, the period of three months will be expired, so the learned Court has already been directed to conclude the trial before 29.01.2022. Learned counsel for the complainant present in the Court has stated that date for recording the statements of remaining witnesses is fixed for tomorrow i.e. 05.01.2022, and all the prosecution witnesses will be produced for the completion of trial within the targeted period.

09. 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 cases reported as **PLD 1994 Supreme Court 65, PLD 1994 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

10. It has been laid down by the Hon'ble Supreme Court of Pakistan in the cases reported as **2020 SCMR 937, 2020 SCMR 594, 2020 SCMR 1182, 2017 SCMR 325 and 2016 SCMR 1447** that:

"The accused are not entitled for the grant of bail after arrest in the offences falling under the prohibitory clause of section 497 Cr.P.C."

11. It has also been laid down by the Hon'ble Supreme Court in a case titled as **Rehmat Ullah Vs. State (2011 SCMR 1332)**, that:

"The courts should not grant or cancel bail when the trial is in progress."

12. Considering the above facts and circumstances, I am clear in my mind that the petitioner / accused has failed to make out his case for grant of bail on the ground of further inquiry as envisaged under section 497(2) Cr.P.C, consequently, instant bail petition stands **dismissed**.

13. 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