

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

Crl.Misc. No.656-B/2019.

Muhammad Shamraiz

Versus

The State etc.

Crl. Misc. No.286-BC/2019.

Qamar Ghulam

Versus

Javed Akhtar etc.

Crl. Misc. No.374-BC/2019.

Qamar Ghulam

Versus

Riasat Hussain 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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04.12.2019.	<p>Raja Faisal Younas, Advocate for the petitioner in Crl. Misc. No.656-B/2019 and for respondent No.2 in Crl. Misc. No.374/BC/2019.</p> <p>Mr. Naeem Ahmed Awan, State Counsel.</p> <p>Mr. Muhammad Zafar Khokhar, Advocate for respondent No.2 in Crl. Misc. No.656-B/2019 and for the petitioner in Crl. Misc. No.286-BC/2019 and 374-BC/2019.</p> <p>Mr. Qamer Inayat Raja, Advocate for the respondent No.1 in Crl. Misc. No.286-BC/2019.</p> <p>Javed Akhtar, Riasat Hussain and Muhammad Nawaz respondents of Crl. Misc. No.286-BC/2019 and 374/BC/2019 in person.</p> <p>Kamal, Inspector, P.S Koral, Islamabad alongwith record.</p>
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Through this single order, I intend to decide above titled three criminal miscellaneous petitions as the same have arisen out of one FIR.

2. Through Crl. Misc. No.656/B/2019, petitioner Muhammad Shamraiz has prayed for post arrest bail in case FIR No.427, dated 24.9.2018, U/S 302, 324, 148, 149, 337-F(i), 337-F(ii)/34 PPC, P.S Koral, Islamabad.

3. Through Crl. Misc. Nos. 286/BC/2019 & 374/BC/2019, petitioner/complainant Qamer Ghulam has sought cancellation of post arrest bail granted by learned Additional Sessions Judge-V (East) Islamabad to respondents Javed Akhtar vide order dated 02.05.2019 and to Riasat Hussain and Muhammad Nawaz vide order dated 15.5.2019 in case FIR No. 427, dated 24.9.2018, U/S 302, 324, 148, 149, 337-F(i), 337-F(ii)/34 PPC, P.S Koral, Islamabad.

4. Brief facts as referred in the FIR lodged by complainant/respondent No.2/Qamar Ghulam are that on 24.09.2018 he alongwith his father Gulstan Khan, cousin Abbas Tahir, nephew Usman were present in their field near house of Shamrez and were harvesting their crops and his relative Azhar Bhatti was also present when at about 12:30 p.m, Shamrez (present petitioner), Muhammad Nawaz and Riasat armed with Kalashnikovs and three un-known persons armed with .30 bore pistol and 12 bore gun reached near their house and started firing, when firing stopped, the complainant's father Gulstan Khan tried to ask reasons for firing, whereupon Shamrez (present petitioner) raised Lalkara to settle the score with complainant. The petitioner fired upon the complainant's father, which landed on his arm, Muhammad Nawaz and Riasat fired upon Usman, which landed on his abdomen and on different parts of the body, whereas Javed fired with his Kalashnikov on the right foot of Abbas. Thereafter the complainant and others took the injured to the hospital, however, in the said incident complainant's father Gulstan Khan succumbed to the injuries.

5. Learned counsel for petitioner Muhammad Shamraiz contends that the petitioner has been involved in this case with malafide intention after consultation, whereas the FIR is silent

qua role of the petitioner and the same was amended in police record subsequently.

6. Learned counsel for complainant/Qamer Ghulam contends that there was some clerical mistake in hand written copy, which has been amended and rectified by the I.O in first daily diary as such the petitioner has specifically been charged with the offence of murder, which otherwise is day light occurrence and there is no false implication of the petitioner; that weapon of offence has been recovered from the petitioner and the petitioner has remained fugitive from law for almost one year after registration of the FIR, therefore, he is not entitled for post arrest bail.

7. Learned counsel for complainant/Qamer Ghulam in petitions for cancellation of post arrest bails contends that respondents Javed Akhtar, Riasat Hussain and Muhammad Nawaz were also armed with Kalashnikovs and resorted to firing and even weapons of offence have been recovered from them but despite that they have been granted post arrest bails by learned Additional Sessions Judge in illegal manner; that the said respondents are extending threats, therefore, their bail granting orders may be recalled.

8. Learned counsel for respondents Javed Akhtar, Riasat Hussain and Muhammad Nawaz in petitions for cancellation of post arrest bails contends that no role was attributed to respondent Muhammad Nawaz nor he caused injury to the deceased or injured; that respondent Javed Akhtar allegedly caused injury on Tahir injured, which at the most falls within section 337(ii) PPC; that respondent Javed Akhtar has also been attributed firing for causing injury to Tahir Abbas injured on his right foot; that respondent Riasat Hussain remained behind the bars and the weapon of offence, which has been recovered from him has not been confirmed in the test regarding its usage in the

occurrence, which itself creates ground of further inquiry; that no illegality is visible from bail granting orders to the respondents.

9. I have heard the arguments and perused the record.

10. Perusal of the record reveals that the petitioner Muhammad Shamraiz and respondents Javed Akhtar, Riasat Hussain and Muhammad Nawaz were involved in case FIR No. 427, dated 24.9.2018, U/S 302, 324, 148, 149, 337-F(i), 337-F(ii)/34 PPC, P.S Koral, Islamabad. Petitioner Shamraiz Akhtar has been attributed specific role for firing upon deceased Gulstan Khan.

11. As far as criminal miscellaneous No.656/B/2019 is concerned, the main ground raised by learned counsel for petitioner Shamraiz Akhtar is regarding amendment/rectification of the FIR made by the police authorities that no role has been attributed to petitioner Shamraiz Akhtar by the complainant. The I.O of this case as well as learned counsel for the complainant has been confronted regarding role of petitioner Shamraiz Akhtar, whereby it has specifically been stated by the I.O that he received the complaint in hospital on behalf of the complainant. The same has been transmitted to police station for registration of criminal case, however, when copy of FIR was conveyed to the I.O in hospital, it revealed that some lines i.e.

"لکھا کہ آج ان کا کام تمام کر دو جس پر تمام ملزمان نے ہم پر سیدھی فائرنگ شروع کر دی۔
ملزم شمریز نے سیدھا فائر کلینشکو میرے والد پر کیا جو اسے دائیں بازو پر لگا۔ نواز اور ریاست
نے"

have been missed inadvertently by the police official while incorporating contents of the FIR. I have gone through the original complaint submitted by the complainant Qamer Ghulam with the able assistance of learned counsel for the parties and the I.O, which expresses the inadvertent mistake by the police official, who chalked the FIR. This aspect was noted by the I.O on the very first day of the alleged incident i.e 24.9.2018 in the

hospital when police constable Usman delivered copy of the FIR, he noted down the mistake and incorporated the same in first daily diary in para-9 at about 3:45 p.m, which is as under:-

"(9) انپکٹر اس وقت کنسٹیبل عثمان C/7245 تھانہ سے واپس آیا ہے۔ جس نے اصل استغاثہ مع نقل FIR لا کر میرے پیش کی ہے۔ جس کا مطالعہ ملاحظہ کیا گیا ہے تو پایا گیا ہے کہ FIR کا اندراج کندہ افسر میاں خان SI سے استغاثہ کا یہ حصہ تو ریاست نے (لکارا کہ آج ان کا کام تمام کر دو جس پر تمام ملزمان نے ہم پر سیدھی فائرنگ شروع کر دی۔ ملزم شمریز نے سیدھا فائر کھینچو میرے والد پر کیا جو اسے دائیں بازو پر لگا۔ نواز - ریاست نے) سہون FIR میں اندراج ہوا ہے لہذا ان الفاظ یا استغاثہ کے اس حصے کو FIR کا حصہ تصور کیا جائے۔ FIR سے تکمیل پیشانی کاغذات کی گئی ہے معہ ہمرائیاں روانہ ایمر جنسی وارڈ پھر ہسپتال کا ہوتا ہوں۔"

The above mentioned first daily diary report reflects that mistake has been acknowledged by the I.O in the record, which was rectified on the very first day of incident. It is trite law that any mistake in recording of FIR could be rectified as and when the same came into the knowledge of the I.O, as such powers to investigate the offence is with Incharge Police Station or the I.O of the case in terms of Chapter XXV of Police Rules 1934. Reliance is placed upon **PLD 2018 SC 595 (Mst. Sughran Bibi vs. The State)**, wherein it has been held that:-

"14. Chapter XXV of the Police Rules, 1934 deals with 'Investigation' and Rule 25.1 falling in that Chapter provides as follows:

"25.1. Powers to investigate.-- (1) An officer-in-charge of a police station is empowered by Section 156, Criminal Procedure Code to investigate any cognizable offence which occurs within the limits of his jurisdiction.

(2) He is also empowered under Section 157(1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offenders. --- ----"

This Rule shows that the power to investigate is relatable to the offence and is not confined to the circumstances reported to the police through

the first information reduced to writing as an FIR. The first information only sets the ball rolling and according to this Rule the investigation to follow is about "the facts and circumstances of the case", not just those reported by the first informant but including any other information received through any other informant or source. This aspect of the matter comes out very clearly through Rule 25.2(3) which reads as under:

"(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

This Rule should suffice to dispel any impression that investigation of a case is to be restricted to the version of the incident narrated in the FIR or the allegations leveled therein. It is quite evident from this Rule that once an FIR is registered then the investigating officer embarking upon investigation may not restrict himself to the story narrated or the allegations leveled in the FIR and he may entertain any fresh information becoming available from any other source regarding how the offence was committed and by whom it was committed and he may arrive at his own conclusions in that regard."

Hence, the Apex Court has clearly settled such type of issues in proper manner as discussed above.

12. The role of each accused including present petitioner Shamraiz Akhtar has been highlighted by the injured P.Ws Usman and Tahir Abbas, who received firearm injuries on their legs, even the role of the petitioner was confirmed by other witnesses during the course of investigation in their statements U/S 161, Cr.P.C. The benefit of inadvertent mistake committed by the police official cannot be extended in favour of petitioner Shamraiz Khan nor any premium can be awarded to him especially in this case when his role seems to be desperate in

which he has used Kalashnikov AK-47, which itself explains his act of desperation.

13. It is trite law that no adverse inference can be drawn from the defective report/copy of FIR as receipt and recording of information report is not condition precedent to set in motion of criminal investigation. Notwithstanding the consequence that the defective FIR or even its absence deprives the accused of his right to cross-examine the first informant on its basis, or it is not at all proved at the trial, such eventuality would not vitiate the conviction. Reliance is placed upon 1996 SCMR 1855 (Khadil Ali and another vs. The State).

14. The plea raised by learned counsel for the petitioner Shamraiz Akhtar regarding his non-presence on spot could not be materialized from any source during the course of investigation, even otherwise plea of alibi could not be considered at this stage from available record, which requires recording of evidence. The petitioner got recovered the weapon of offence^{i.e} Kalashnikov used in the incident, which prima facie linked him with hideous crime of murder of deceased Gulstan Khan. The antecedents of the petitioner further highlights that number of similar cases were registered against him, whereby he is accused for attempt to commit murder.

15. The petitioner has been charged with the offence, which falls within prohibitory clause of section 497, Cr.P.C. The petitioner remained fugitive from law for one year after the incident and obtained transit bail from High Courts of other Provinces and even from learned Trial Court but failed to appear at the time of confirmation of pre-arrest bail as such he has delayed the investigation for one year, therefore, there is every possibility that after granting bail, he might abscond.

16. Qamar Ghulam/complainant is aggrieved with bail granting orders to respondents Javed Akhtar, Riasat Hussain and Muhammad Nawaz, who were also armed with Kalashnikovs, however, they have been granted bail due to their lesser role in the alleged incident, whereas Muhammad Nawaz was not attributed any role of causing injury to any of the witnesses, whereas Riasat Hussain and Javed Akhtar were attributed firing with Kalashnikovs on the injured witnesses on their non-vital parts as such they have earned the benefit of their non-fatal role. I have also gone through the bail granting orders, which have been passed by learned Additional Sessions Judge after due appreciation of law and facts. The offence with which respondents have been charged, tentatively attracts provisions of sections 337-F(i) and 337-F(ii) PPC as the injuries are on non-vital parts and one injury to witness Abbas Tahir is just grazing wound on umbilical region, which is not grievous in nature, hence, learned Additional Sessions Judge rightly granted post arrest bails to the respondents.

17. Learned counsel for the complainant has been confronted to justify cancellations of bail granting orders to respondents Riasat Hussain and Javed Akhtar, whereupon he contends that the order itself is perverse, illegal and is not factually correct, however, after appreciation of order of post arrest bail of co-accused Shamraiz Akhtar, I am of the considered view that role, which has been attributed to respondents Muhammad Nawaz, Javed Akhtar and Riasat Hussain falls within ambit of further inquiry as such bail granting orders are not patently illegal, erroneous or factually incorrect or are in violation of principles settled in 2010 SCMR 580 (The State/Anti Narcotic through Director General vs. Rafiq Ahmed Channa) and 2009 SCMR 786 (Mst. Noor Habib vs. Saleem Raza and others).

18. It is also settled law that considerations for grant of post arrest bail and cancellation in terms of section 497(5) Cr.P.C are entirely different, especially when there is no allegation of misuse of post arrest bail granted to the respondents. Reliance is placed upon 2016 SCMR 676 (Chairman NAB through PGA NAB Islamabad vs. Muhammad Khalid) and PLD 2011 SC 210 (Abdul Rasheed Khan vs. Zahoor Ahmed Malik). Learned counsel for the complainant has failed to justify any illegality or impropriety in the orders for grant of post arrest bail as such no exceptional or strong grounds have been brought on record for cancellation of bail. Reliance is placed upon 2011 SCMR 908 (The State through Director General, ANF vs. Said Ahmed) and 2009 SCMR 1202 (Muhammad Azhar vs. Dilawar).

19. It is trite law that Courts should not grant or cancel the bail, when challan has been submitted in the Court rather it would be appropriate for the Courts to issue direction to Trial Court to conclude the trial within specified period. Reliance is placed upon 2011 SCMR 1332 (Rehmat Ali vs. The State and another).

20. For what has been discussed above, all the titled criminal miscellaneous petitions are dismissed. Learned Trial Court seized with the matter is directed to conclude the trial within a period 06 months from the date of receipt of copy of this order under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam