

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Criminal Misc. No. 813-B of 2021**

Syed Imran Gillani

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.
(05)	07.09.2021	M/s. Raja Rizwan Abbasi and Izrar Ali, Advocates for the petitioner / accused. Sardar Shabbir Hussain, Advocate for the respondent No. 2. Syed Shahbaz Shah, State Counsel. Ashiq Shah, Inspector.

Through the instant bail petition, the petitioner seeks bail after arrest in case FIR No. 182/2020, dated 08.07.2020, offence under Sections 324, 427, 148, 149, 109 PPC, Cross Version under Sections 302, 324, 148, 149, 337-F(ii), 337-F(v), 337-F(vi), 337-D, 337-C P.P.C registered at Police Station Shahzad Town, Islamabad.

02. On 08.07.2020, FIR No. 182/2020 dated 08.07.2020 was registered on the compliant of Syed Shujat Ali Gillani against the accused nominated in the FIR alleging

that the accused party has attacked on the complainant party and made firing, caused injuries to the members of complainant party, the time of occurrence is shown as 06:00 p.m. The present petitioner namely Syed Imran Gillani is a member of the complainant party of the FIR.

03. On 09.07.2020, at about 12:30 a.m. police has registered a report as cross version on the compliant of Syed Asad Hussain Shah, wherein the allegations of firing and causing injuries etc. against the accused nominated in the cross version have been leveled. It is alleged in the cross version that the present petitioner while armed with pistol 30-bore made fire shots, resultantly Shahab Shah got injured, hence the case was made out against the present petitioner in the cross version.

04. 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 of Pakistan 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 30.09.2020; it is a case of cross version which establishes that attack was launched by the other side; 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. Lastly, learned Counsel for the petitioner / accused has prayed for acceptance of his bail petition.

05. 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 cross version; recovery of pistol 30-bore has been effected from him;

offences fall under the prohibitory clause of Section 497 Cr.P.C; sufficient incriminating evidence is available against the petitioner / accused, hence he is not entitled for grant of bail after arrest.

06. 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.

07. As per prosecution story, the petitioner made firing with pistol 30-bore, on Shahab Shah, Kamran Shah, co-accused also made firing with the *Kalashnikov* which hit both the arms of the Shahab Shah and he got injured. However, it is not mentioned that firing made by the petitioner with pistol 30-Bore hit on which part of the body of injured, Shahab Shah.

08. Medico Legal Report of Shahab Shah / injured reflects one entry and exit wound on the left arm and one entry wound on the right arm, no other injury is mentioned on the body of Shahab Shah / injured other

than aforementioned two injuries. It is categorically mentioned that injuries caused on both arms of the injured Shahab Shah were caused by the burst fire with *Kalashnikov* by Kamran Shah / accused nominated in the cross version. There is clear conflict between ocular account and medical evidence.

09. It is held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Muhammad Hanif Vs. Manzoor and 2 others" (NLR 1981 SC 367)** that:

***"It is true that at the stage of deciding the question of bail, the court does not enter upon a detailed appreciation and examination of evidence, but it is also clear that the question cannot be decided in vacuum and the court has to look at the material available when the bail is applied for. Now, in the present case, result of medico-legal examination of the deceased was available and the learned Judge of High Court could not have refused to look at it."***

The same law has been laid down by the Hon'ble Supreme Court of Pakistan in a case

titled as **"Awal Khan and 7 others Vs. The State through AG-KPK and another" (2017 SCMR 538)** that:

***"When the medical evidence is in conflict with the ocular account then, benefit of doubt at bail stage must go to the accused."***

Reliance is also placed on the cases titled as **"Khan Mir Vs. Amal Sher" (1989 SCMR 1987)** and **"Syed Khalid Hussain Shah Vs. The State" (2014 SCMR 12)**.

10. As it is a case of cross version, question of aggression is still to be determined. In a case titled as **"Sohaib Mahmood Butt Vs. Iftikhar-ul-Haq" (1996 SCMR 1845)**, the Hon'ble Supreme Court while providing guidelines for the exercise of jurisdiction in bail matter in the cases of two counter versions arising from the same incident held as under;

***"Now what would constitute as sufficient grounds for further inquiry would depend on the peculiar facts of each case and no hard and fast rule can be laid down for that purpose. Every hypothetical***

***question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial Court subsequently after evaluation of evidence. Broadly speaking, the condition laid down in clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further inquiry into his guilt which means that the question would be such which has nexus with the result of the case and may show or tend to show that accused is not guilt of the offence with which he charged. For example, if accused is charged for offence under section 302, P.P.C. but there are grounds for further enquiry which may show that he may not be convicted of the charge under section 302, P.P.C. but may be acquitted or convicted for a lesser offence."***

***"In the counter-versions arising from the same incident, one given by complainant in F.I.R and the other given by the opposite party case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be***

***decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed".***

Further reliance in this regard can also be placed on the case titled as **"Mehmood Akhtar and another Vs. Haji Nazir Ahmad and 4 others" (1995 SCMR 310).**

11. 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 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

12. It is important to remember that bail is not to be withheld as a punishment. There is



no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail after arrest granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run. Reliance is placed on a case titled as **"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81).**

13. It is held by the Hon'ble Supreme Court in a case titled as **"Zaigham Ashraf Vs. The State and others" (2016 SCMR 18)** that:

***"To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise***

***shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground."***

14. Investigation in the case has been completed and the petitioner / accused is no more required for the purpose of investigation. He is previously non-convict and is behind the bars for the last more than 11 months. Trial of the petitioner / accused has not seen any fruitful progress as yet, therefore, his further incarceration in jail would not serve any purpose.

15. A tentative assessment of record shows that present petitioner has made out a case of further inquiry.

16. In view of above, instant petition is **accepted** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 500,000/- (Five Hundred Thousand)** with two sureties each in the like amount to the satisfaction of learned trial Court.

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

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal /-

*Approved for reporting.*