

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

Criminal Misc. No. 833-B/ 2020
Asfand Yar
Versus
The State, 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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27.07.2020	Raja Aamir Shahzad, Advocate for the petitioner. Syed Shahbaz Shah, learned State Counsel Raja Iftikhar Ahmad Advocate for respondent No.2/complainant, M. Ashraf SI with record.
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Through the instant petition, petitioner (Asfand Yar) has prayed for post-arrest bail in case FIR No.160, dated 21.06.2020, under sections 324, 148, 149, 337-F (ii), (iii), 337-A (ii) PPC, registered at Police Station Shahzad Town, Islamabad.

2. According to the allegations, set-forth in the FIR lodged by respondent No.2/complainant, present petitioner while armed with dagger, along with co-accused Abdul Nabi Bangash, Junaid Ullah, Mohabbiullah, armed with Kalashnikovs, Muhammad Ullah with 30 bore pistol and Rehmatullah with dagger along with 8/10 unknown persons duly armed with lethal weapons under the command of Abdul Nabi Bangash, on 21.6.2020 at about 6:00 p.m. trespassed into his house situated in street No.12, Royals Homes, Thanda Pani, Islamabad. According to the allegations, present petitioner caught hold of Abdur Rahim and inflicted a dagger blow which hit on the belly of said Abdul Rahim, due to which he sustained injury and became unconscious.

3. The cross-version of the present FIR was registered on the night of 22.06.2020 at about 2:20 a.m. on the statement of Asfand Yar, present petitioner, wherein he alleged that Haji Rahim Khan, Abdul Rahim, Rizwan and Saifullah. Insha Allah along with 5/6 unknown persons in furtherance of their common intention, trespassed into his house, gave severe beating and that Insha Allah inflicted a Kalashnikov Butt blow to Junaid at his right hand and the assailant also extended threats of dire consequences

4. Learned counsel for the petitioner contends that it is a case of cross-version wherein it is yet to be established as to which party was aggressor; that the injury attributed to the petitioner is on non-vital part of the body without repetition, which create doubts on the applicability of Section 324 PPC; that as per MLRs, serious injured was examined later in time than the one sustained minor injuries, which itself makes the case one of further inquiry; that co-accused of the petitioner namely Muhammad Ullah, Mohibullah, Junaidullah and accused of cross-version Abdul Rahim, Saifullah and Samiullah were allowed bail by the learned Addl: Sessions Judge-V, Islamabad (west) vide order of even date i.e. dated 08.7.2020, therefore, petitioner deserves the same treatment; that the present FIR is a counter blast to application filed by co-accused Abdul Nabi Bangash; that investigation is complete and petitioner is no more required for further probe. Learned counsel placed reliance upon case law reported as 2020 SCMR 677, 2016 SCMR 1246,

2013 SCMR 1415, 2017 YLR 978, 2013 YLR 1133 and 2016 MLD 2048.

5. On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that bail cannot be allowed merely due to having cross-version without making the tentative assessment of the given circumstances; specific role of causing dagger blow is attributed to the petitioner; that the MLR corroborates the alleged injury attributed to the petitioner, therefore, he is not entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2002 SCMR 1370, 2017 MLD 444, PLJ 1999 Cr.C. (Lahore) 273, 2013 YLR 2046, and 1992 SCMR 501.

6. Arguments heard, record perused.

7. As per allegations, the petitioner inflicted dagger blow with no repetition while the offence alleged i.e. 337-F(ii) PPC entails punishment of daman and imprisonment of either description for a term which may extend to three years as ta'zir, which does not fall within the ambit of prohibitory clause and makes the case one of further inquiry.

8. The Hon'ble Apex Court in **"Saqib and others V. The State and others" (2020 SCMR 677)** held that :-

"4. During the course of arguments, it has been noted by us and as confirmed by the learned State Counsel under instructions of the police officer present with record that during the occurrence two persons from petitioner's side namely Saqib and Majaz, petitioners No.1 & 3 also sustains injuries but those injuries have not been disclosed in the FIR. Learned counsel appearing on behalf of State also confirms that a cross-version in this regard was also recorded and

challan in both cases i.e. FIR and cross version has been submitted. In these circumstances, it is for the trial court to determine as to who was the aggressor and who was aggressed upon, of course, after recording evidence of the parties. As for now, case against the petitioners calls for further inquiry falling within the ambit of Section 497 (2) Code of Criminal Procedure.” [Emphasis added]

The ratio *ibid* guides to observe that in a case where challan has been submitted in both cases i.e. FIR and cross-version, like the case in hand, it is for the trial court to determine as to which party was the aggressor.

9. So far as applicability of Section 324 PPC is concerned, the Hon’ble Apex Court in an identical case reported as “**Muhammad Faisal V. The State and another**” (2020 SCMR 971) held that:-

“6. As far as the question of applicability of Section 324 PPC is concerned, undeniably, the injuries are on non-vital part against a motive which is feeble in nature, hence, we constrained to give any finding lest it may prejudice the case of either party, however, it would be resolved by the learned Trial Court after recording of evidence during the course of proceedings before it. Keeping in view all the facts and circumstances, and while seeking guidance from judgment of this Court tilted as ‘Muhammad Umer V. The State and another (PLD 2004 SC 477)’, we are of the considered view that the case of the petitioner is of further inquiry falling within the ambit of Section 497 (2) Cr.P.C. Otherwise, liberty of a person is a precious right which has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973.”

10. Moreover, co-accused of the petitioner namely Muhammad Ullah, Mohibullah, Junaidullah and accused of cross-version Abdul

Rahim, Saifullah and Samiullah have already been allowed bail by the learned Addl: Sessions Judge-V, Islamabad (West) vide orders of even date i.e. dated 08.7.2020.

11. The case law relied upon by learned counsel for the respondent i.e. 2002 SCMR 1370, 1992 SCMR 501, 2017 MLD 444, PLJ 1999 Cr.C. (Lahore) 273 and 2013 YLR 2046 pertain to a murder case, therefore, for having distinct facts and circumstances, do not extend any help to the petitioner.

12. In view of above tentative assessment, the petitioner is held entitled to the concession of post-arrest bail at this stage. Consequently, the instant criminal misc. petition is allowed, petitioner Asfand Yar is admitted to post-arrest bail subject to furnishing of bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousands) to the satisfaction of learned Trial Court.

13. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail