

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.546-B of 2021

Mudassar Mukhtar
Vs
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.	28.06.2021	M/s Raja Rizwan Rizwan Abbasi and Mr. Izrar Ali, Advocates for the petitioner. Syed Shahbaz Shah, learned State Counsel. M/s Raja Faisal Younas and Malik Umar Qayyum, Advocates for the respondent No. 2. Asif Khan, S.I

Through the instant bail petition, the petitioner seeks bail after arrest in case FIR No. 04/2021, dated 02.01.2021, offence under Sections 302, 148, 149, P.P.C registered at Police Station Ramna, Islamabad.

2. It is alleged in the FIR that on 02.01.2021, petitioner / accused alongwith co-accused has committed Qatl-e-amd of son of the complainant at 02 A.M. (midnight). Hence, the instant FIR.

3. Learned counsel for the petitioner contends that the petitioner/accused is innocent; there is no motive for committing murder of the deceased; the petitioner/accused being a law abiding police constable was on duty and the police party got information that an offence of dacoity took place; they tried to stop the car of the deceased which was not stopped while chasing the car, other members of the police party made firing. Consequently, Mr. Usama Nadeem, son of the complainant, who was driving the car, died. Learned counsel further contends that according to the police investigation, no role has been attributed to the petitioner, therefore, he is entitled for grant of bail after arrest.

4. Conversely, learned State Counsel assisted by the learned Counsel for the complainant has controverted the arguments advanced by learned counsel for the petitioner/accused and stated that petitioner/accused is specifically nominated in the FIR; he has committed a heinous crime; offences fall under the prohibitory clause of

Section 497 Cr.P.C; he was arrested from the spot and pistol was recovered from him, hence, he is not entitled for grant of bail after arrest.

5. 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.

6. Joint Investigation Team (JIT) headed by SP (Saddar) Zone was constituted; Seven (07) senior police officers were members of the Team; JIT has given its findings that the police party while patrolling received an information through wireless that an offence of dacoity has been committed; in the meanwhile police party saw a car in the area; the police party tried to stop the car but it was not stopped, so the police party made firing. Consequently, person driving the car, Usama Nadeem, succumbed to the injuries.

7. The Joint Investigation Team has also given its opinion that the petitioner/accused has not fired upon Usama Satti/deceased. It is

also mentioned in challan/report u/s 173 Cr.P.C that the deceased died due to the firing of other members of the police party.

8. Learned State Counsel has also conceded that according to the report of JIT and investigation conducted by the I.O, it was found that the present petitioner/accused has not fired upon the deceased rather the deceased died due to firing of other members of the police party.

9. Police has not collected any evidence regarding the motive/enmity of the petitioner/accused with the deceased; he being police constable, was on duty at the time of occurrence. There is no incriminating evidence available against the petitioner/accused regarding his involvement in the alleged offence.

10. 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 **PLD 1994 Supreme Court 65, PLD 1994 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

11. 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 reported as **"Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)"**.

12. 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."

13. 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 06 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.

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

15. 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. 200,000/- (Two Hundred Thousand only)** with one surety each in the like amount to the satisfaction of learned trial Court.

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

(TARIQ MEHMOOD JAHANGIRI)
JUDGE