

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

Criminal Misc. No. 1016-B/2020
Muhammad Zafran
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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08.10.2020	Petitioner on ad-interim pre-arrest bail with Mr. Muhammad Arif Khan, Advocate, Syed Shahbaz Shah, State Counsel, Ch. Muhammad Naeem Ali Gujjar, Advocate for complainant, Muhammad Afzal ASI with record.
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Through this petition, petitioner (*Muhammad Zafran*) has prayed for pre-arrest bail in F.I.R. No.375 dated 26.08.2020 under Section 452, 506(ii), 148, 149 PPC, registered at Police Station Kohsar, Islamabad.

2. The allegation against the petitioner is that on 23.08.2020, he had a quarrel with sons of the complainant and thereafter launched an attack while equipped with firearms along with co-accused namely Aurangzeb, Gulfam, Adnan and two unknown persons; trespassed into the house of the complainant by scaling over the wall, extended threats, caused nuisance and hurled abuses to the women folk.

3. Learned counsel for the petitioner contends that there is a delay of three days in lodging the F.I.R, which strengths the possibility of false implication; that a wider net had been thrown by the complainant to involve maximum members of the family of accused; that the residents of the vicinity sworn affidavits to the effect that the accused persons never trespassed into the house

of the complainant, while equipped with firearm weapons and that only a skirmish had taken place between the petitioner and sons of the complainant; that co-accused have been allowed pre-arrest bail, therefore, petitioner is entitled to the same concession under the principle of consistency. Learned counsel placed reliance upon case laws reported as PLD 2018 Lahore 93, PLD 2020 Lahore 191 and 2015 US 145.

4. On the other hand, learned counsel for the complainant argued that petitioner is specifically nominated in the F.I.R; recovery is yet to be effected; that motive is also attributed to the petitioner while case of co-accused, who were allowed pre arrest bail is distinct than that of the petitioner and in absence of any *malafide* or ulterior motive, petitioner cannot be held entitled to the concession of pre-arrest bail.

5. Heard, record examined.

6. Record reveals that there is an allegation of launching an attack and trespass into the house of the complainant while holding firearm weapons by the petitioner and co-accused. During investigation, seven persons of the vicinity sworn affidavits to the effect that on 23.08.2020 a skirmish had taken place between the petitioner and sons of the complainant in the street and that none of the accused while armed with firearm weapons trespassed into the house of complainant, as alleged. In addition, there is also a delay of three days in lodging the F.I.R, while the investigation testified the fact of tendering affidavits by the inhabitants of the area. Moreover, the Investigating Officer, on being questioned, has

categorically stated that nothing is to be recovered from the petitioner. All these facts bring the case of the petitioner within the ambit of further inquiry and an exception where possibility of false implication cannot be ruled out.

7. The provision of Section 498 Cr.P.C is intended to be used sparingly in exceptional cases where malafide is patent or even latent. In the case in hand, malafide is found on the surface in view of peculiar circumstances of the case highlighted above. Reliance is placed upon *"Farhat Hussain Shah and another V. The State and others"* (2010 SCMR 1986).

8. Admittedly, co-accused have been allowed pre-arrest bail while the offences alleged i.e. Section 452 and 506(ii) PPC entail punishment up to seven years which do not fall within the ambit of prohibitory clause.

9. Petitioner having no criminal record of any nature and remedy of pre-arrest bail is to save the innocent people from the horrors and humiliation of the police. The Investigation Officer has stated in the Court that investigation is in progress and there are equal chances that whether occurrence as alleged happened or otherwise. In this view of the matter, petitioner who is previously not involved in any case seems to be entitled to the concession of pre-arrest bail.

10. In view of above, instant criminal misc. petition is allowed, ad-interim bail granted to the petitioner (Muhammad Zafran) vide order dated 28.09.2020 is confirmed subject to furnishing of fresh bail bonds in the sum of Rs.100,000/- (*Rupees*

one hundred thousands) with one surety in the like amount to the satisfaction of learned Trial Court.

11. Needless to mention that above is only tentative assessment, for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran