

ORDER SHEET.

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

Criminal Misc. No. 718/B/2019.

Aqib Javed alias Chohi

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.
	28.11.2019.	Ms. Qurat ul Ain Ayesha, Advocate alongwith petitioner. Barrister Ayesha Siddique Khan, State Counsel. Tahir Khan Niazi, S.I. P.S. Aabpara, Islamabad.

Through this Crl. Misc., the petitioner Aqib Javed alias Chohi has applied for pre-arrest bail in case FIR No.363, dated 29.10.2019, U/S 337-H(ii)/34 PPC, read with Section 13(20)65 Arms Ordinance P.S. Aabpara, Islamabad.

2. Brief facts referred in the instant case got lodged by complainant/respondent No.2 Ali Zaman Constable are that on 29.10.2019 at about 11:00 a.m. he was present near Sitara Market G-7/2 Park, Islamabad, whereby two boys were firing in air with their pistols one after the other and when he tried to arrest those boys, one of them namely Aamar Ali tried to fled away from the scene on his motorcycle No.RIR-6659 along with pistol, whereas other boy namely Sheheryar fled away from the scene alongwith his pistol. The arrested accused Aamar has failed to produce valid license and disclosed that the said pistol was sold out to him by Aaqib Javed (present petitioner).

3. Learned counsel for the petitioner contends that petitioner has been nominated in this case with malafide and even statement of co-accused is not admissible at this stage especially when nothing is available on record to link the petitioner with the alleged crime of indiscriminate firing; that offence U/S 13(20)65 AO is bailable and even offence U/S 337-H(ii) PPC has allegedly been committed by the co-accused and petitioner has been involved just to harass and humiliate him at the hands of local police.

4. Conversely, learned State Counsel alongwith I.O contends that if the petitioner is not investigated, the recovery of pistol from Aamar Ali/co-accused could not be justified and complainant has no ill will or malafide against the petitioner as he has been nominated by co-accused.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that petitioner Aqib Javed alias Chohi has been nominated as accused in case FIR No.363, dated 29.10.2019, U/S 337-H(ii)/34 PPC, read with Section 13(20)65 Arms Ordinance P.S. Aabpara, Islamabad, when police official Ali Zaman Constable on duty arrested Aamar Ali when he alongwith co-accused Sheheryar was firing one after another and during the course of investigation the arrested co-accused Aamar Ali nominated present petitioner from whom he has allegedly received the pistol for test fires.

7. The offence with which petitioner has been charged U/S 337-H(ii) PPC is bailable and even both the offences do not fall within the prohibitory clause of Section 497 Cr.P.C. The petitioner was not present at crime scene, nor there is any direct evidence available on record through which petitioner be linked with the arrested co-accused and he was nominated on the statement of co-accused only, hence, case of the petitioner falls within the purview of further inquiry in terms of Section 497(2) Cr.P.C. The petitioner has joined the investigation and his co-accused has already been granted post-arrest bail, therefore, declining bail of the petitioner at this stage would amount to humiliate him at the hands of local police and he would be humiliated and disgraced due to the arrest. Mere acquisition of one of the co-accused against the petitioner could not be considered at this stage against the petitioner as mere statement of co-accused has no legal value whereby it is trite law that any benefit if accrued at bail stage would have extended to the petitioner.

8. In view of above, instant petition is allowed and ad-interim pre-arrest bail granted to petitioner vide order dated 13.11.2019 is hereby confirmed subject to furnishing fresh bail bonds in the sum of Rs.20,000/- with one local surety in the like amount to the satisfaction of learned trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE