

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 666/B/2019.

Waqas Hussain Shah (alias Kashi)

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.
	07.11.2019.	Mr. Basharat Ullah Khan and Ch. Khurram Tasaddaq, Advocates for petitioner. Barrister Ayesha Siddique Khan, State Counsel. Mr. Zahid Asif Ch., Advocate for complainant/ respondent No.2.

Through this Crl. Misc., petitioner has prayed for post-arrest bail in case FIR No.23, dated 18.02.2019, U/S 302, 449, 447, 452, 109/34 PPC, P.S. Nilore, Islamabad.

2. Brief facts referred in the instant case FIR lodged on the complaint of respondent No.2 Barkat Hussain Shah are that on 18.02.2019 at about 10:00 a.m. in the morning complainant alongwith Hubdar Hussain Shah, Iqrar Hussain Shah, Atif Shah as well as Qaiser Shah were present at their home when Khizar Shah armed with .30 bore pistol, Waqas Hussain Shah alias Kashi armed with Kalashnikov entered in their house started abusing them and when they were confronted by the sons of complainant Iqrar Hussain Shah, Atif Hussain Shah, Hubdar Hussain Shah and his nephew Qaiser Hussain Shah and in this dispute Hubdar Hussain Shah

came in front to restrain the intruders Waqas Hussain Shah alias Kashi raised lalkara and asked Khizar Shah to teach him lesson for his interference in our land and filing of application in the Police Station, upon which Khizar Shah with his .30 bore pistol made 2/3 fires on Hubdar Hussain Shah and one fire landed on his left knee, where-after both the accused resorted to aerial firing and fled away from the scene and Hubdar Hussain Shah succumbed to injuries on his way to PIMS hospital.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that he was only attributed with the role of raising lalkara and as per contents of FIR no overt act has been attributed to the petitioner; that investigation has been completed and he is no more required for the purpose of investigation, even otherwise, fatal shot was attributed to co-accused, therefore, petitioner is entitled for concession of post-arrest bail.

4. Conversely, learned State Counsel as well as learned counsel for complainant/respondent No.2 contends that petitioner is directly nominated with specific role of raising lalkara upon which his co-accused resorted to firing and committed murder in the house of complainant. It has further been argued that petitioner as well as co-accused are cousins *inter-se* who have committed murder in order to take revenge of land dispute upon which a complaint was filed by

complainant in the police station regarding land dispute.

5. Arguments heard, record perused.

6. The tentative assessment of record reveals that petitioner has been nominated as accused in case FIR No.23, dated 18.02.2019, U/S 302, 449, 447, 452, 109/34 PPC, P.S. Nilore, Islamabad with the allegations that he raised lalkara while armed with Kalashnikov upon which his co-accused resorted to firing with .30 bore pistol and as a result whereof one Hubdar Hussain Shah died after receiving firearm injury on his left knee.

7. As per record weapon of offence was recovered from petitioner on 27.05.2019 and 13 fire empties of Kalashnikov were recovered on 18.02.2019, however, no report of firearm expert has been received till date. The petitioner was arrested on 21.05.2019 and challan has been submitted before the Court on 28.09.2019 and investigation has been completed. The conduct of petitioner reflected from the record is only to the extent of raising lalkara, whereby he has not been attributed any overt act for causing injury to the Hubdar Hussain Shah rather his presence is reflected from record. In such type of situation effect of aforesaid lalkara shall be determined at trial after recording of evidence. Reliance is placed upon 1996 SCMR 1654 (Muhammad Sadiq and another Vs. The State), 2003 SCMR 958 (Tariq Zia Vs. The State).

8. Similarly, two co-accused, who were

subsequently nominated by the complainant through supplementary statement have also been granted post-arrest bail by the trial Court and as such the principle of consistency is also visible in the grounds taken by the petitioner's side. The conduct of the petitioner could only be considered relevant when trial would be conducted. Moreover, question of common intention also requires evidence, even the motive referred in the FIR is related to the principal accused. All these grounds *prima-facie* disclose the ground of further inquiry in terms of Section 497 (2) Cr.P.C.

9. The petitioner is behind the bars since 21.05.2019 and no useful purpose would be achieved by keeping the petitioner behind the bars especially when the trial has not yet commenced, therefore, petitioner is entitled for concession of post-arrest bail. Hence, instant petition is allowed subject to furnishing of bail bonds in the sum of Rs.2,00,000/- (Rupees Two Lac only) with one surety in the like amount to the satisfaction of learned trial Court.

(MOHSIN AKHTAR KAKANI)
JUDGE