

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

Crl. Misc. No.167-B/2020.

Gul Aagha
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.
------------------------------	----------------------------	---

(03)

30.03.2020

Mr. Zahid Asif Chaudhry, Advocate for the petitioner.
Mr. Mudassar Malik, Advocate for respondent No.2/complainant.
Mr. Atif Khokhar, State Counsel.
Tariq Malik, S.I, P.S Noon, Islamabad alongwith record.

MOHSIN AKHTAR KAYANI, J: Through the instant criminal miscellaneous petition, the petitioner has prayed for his post arrest bail in case FIR No.66, dated 01.04.2019, U/S 302, 324, 148, 149, 34, 109, PPC, P.S Noon, Islamabad.

2. Brief facts referred in the above mentioned FIR lodged on the complaint of respondent No.2/complainant are that on 01.04.2019, at about 6:30 p.m, Muhammad Waqas real brother of respondent No.2 alongwith his friend Ali Haider were going towards Haji Camp and when they reached near Chowk of Sector 1-14/3 co-accused Faisal Malik alongwith un-known persons restrained Ali Haider and after exchanged of hot words co-accused Faisal Malik murdered Muhammad Waqas by using his pistol, whereas other co-accused fired upon Ali Haider, which hit him on his left side of belly, whereas rest of the accused resorted aerial firing.

3. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in this case; that the petitioner has been nominated in this case on the statement of second deceased Ali Haider, who died after three days of the incident in hospital, who got recorded his

dying declaration and attributed role of indiscriminate firing to the petitioner; that investigation has been completed and challan has been submitted before the Court; that nothing has been recovered from the petitioner; that one of co-accused Faheem having similar role has already been granted post arrest bail by learned Trial Court, therefore, the petitioner is also entitled for grant of post arrest bail.

4. Conversely, learned counsel for respondent No.2/complainant contends that the petitioner remained fugitive from law from the date of incident till date of his arrest i.e. 14.01.2020 approximately for eight months as such he is not entitled for concession of post arrest bail. In support of his arguments, learned counsel has relied upon *PLD 1985 SC 402 (Anwar Gul vs. Zawar Khan)*, *PLD 1985 SC 182 (Muhammad Sadi vs. Sadiq)* & *2010 SCMR 179 (Raja Fazal ur Rehman vs. Muhammad Afzal)*.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner has been nominated in the case on supplementary statement with role of indiscriminate firing in the alleged incident, in which two persons Muhammad Waqas and Ali Haider were murdered by co-accused Faisal Malik and others. The tentative assessment of the record reflects that the FIR has been lodged on the complaint of respondent No.2, who is complainant but he did not nominate the petitioner rather his name has been included on the statement of deceased Ali Haider, who remained in hospital for two/three days and before his death, he recorded his statement to the I.O, in which he nominated the petitioner with role of indiscriminate firing, whereas direct role has been attributed to co-accused Faisal Malik and Bilal, who resorted to firing and injured Ali Haider.

7. The entire background clearly spells out that nomination of the petitioner is based upon statement of the deceased, which is to be considered dying declaration, however, the petitioner did not cause any injury to the deceased nor any pistol was recovered from him during the course of investigation, even he has been identified through identification parade, which further confirms that this is case of further of inquiry in terms of section 497(2) Cr.P.C. The status of deceased's statement can only be justified during the trial although at this stage the corroborative evidence has not been shown by the I.O. Even one of co-accused Faheem, who has also been nominated and attributed similar role by the deceased Ali Haider has been granted post arrest bail by learned Trial Court as such principle of consistency is applicable in this case. Reliance is placed upon 2008 SCMR 173 (*Muhammad Daud and another vs. The State and another*), PLD 2002 SC 46 (*Fida Hussain vs. The State and others*), 1979 SCMR 9 (*Muhammad Fazal alias BODI vs. The State*) & 2011 SCMR 1945 (*Malik Waheed alias Abdul Hameed vs. The State and another*).

8. The only hindrance which comes to the way of the petitioner is that he remained fugitive from law for eight months till his arrest i.e. 14.01.2020. I have gone through the record and come to the conclusion that role of the petitioner in this case is only of mere presence on spot although he has been attributed indiscriminate firing by deceased Ali Haider. Nothing has been recovered from the petitioner, which also makes case of the petitioner that of further inquiry. In such like situation bail is to be allowed as of right and not by way of grace of concession. Mere abscondence of the accused person is not sufficient to refuse bail. Reliance is placed upon 2012 SCMR 1137 (*Ehsan Ullah vs. The State*), PLD 2012 SC 222 (*Qamar alias Mitho vs. The State and others*), 2016

SCMR 676 (Chairman NAB through PGA NAB Islamabad vs. Muhammad Khalid) & 2016 SCMR 1520 (Muhammad Aslam vs. The State and others). I have gone through the judgments relied upon by learned counsel for respondent No.2, in which bail has been refused due to abscondance but facts and circumstances narrated in those judgments are different as in those cases the petitioners were attributed direct role of causing grievous injury to the deceased, whereas in this case the petitioner did not cause any injury to any of the deceased.

9. In view of above discussion, the instant criminal miscellaneous petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam.