

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

Crl. Misc. No.369-B of 2021

Salahuddin
Vs
The State

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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02.	28.04.2021	Mr. Fahid Bin Sadaqat, Advocate for the Petitioner Ms. Ayesha Khan, learned State Counsel Zahid, S.I
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TARIQ MEHMOOD JAHANGIRI, J. The petitioner, Salahuddin, seeks bail after arrest in case FIR No.38/2017, dated 27.01.2017, offence under Sections 186/353, 324/34 P.P.C, 13/20/65 Arms Ordinance, 1965, read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Industrial Area, Islamabad.

2. It is alleged that on 27.01.2017 at about 5 P.M, during snap checking Eagle Squad personnel signalled two suspicious persons to halt. Both the persons took out 30 bore pistols and made direct firing upon police party. As a result of firing, Abdul Hameed, Constable sustained bullet injury. Accused Muhammad Ashraf was arrested at the spot while his companion managed to escape from the crime scene. Muhammad Ashraf, accused disclosed the name of his companion as Salahuddin. Hence, the instant FIR.

3. Learned counsel for the petitioner, *inter alia*, contends that petitioner/accused has no connection with the commission of offence; there is no evidence available on record against the petitioner; he has not been identified by the police during the identification parade; hence he is entitled for relief of bail after arrest.

4. Conversely, learned State Counsel representing the State has controverted the arguments made by the learned Counsel for the accused/petitioner and contended that accused is nominated in the FIR; he remained fugitive from law for a period of four long years, hence he is not entitled for the grant of bail after arrest.

5. We have heard the learned Counsel for the petitioner, learned State Counsel and perused the record with their able assistance.

6. As per prosecution story, main accused namely Muhammad Ashraf who made firing on the police party was apprehended at the spot, pistol 30 bore was also recovered from him and he disclosed the name of the present petitioner/accused.

7. As the petitioner/accused has been involved in this case on the basis of admission made by co-accused; there is no direct evidence against the petitioner/accused regarding the commission of offence. Under Article 38 of Qanun-e-Shahadat

Order (10 of 1984), *No confession made to a police officer shall be proved as against a person accused of any offence*, reliance is placed on a case reported as “***Abdul Qadir Motiwala Vs. State***” **2000 PCr.LJ 1734 (DB)**, in which it is held that *confession made before a person in authority and confession made against co-accused, was inadmissible and such a confession was hit by Article 38 of Qanun-e-Shahadat, 1984*. Reliance is also placed on a case reported as “***Muhammad Aqeel alias Tapla Vs. The State***” **2014 MLD 316 (DB)**.

8. Identification parade of the accused was conducted on 19.03.2021 in Central / Adyala Jail Rawalpindi, the complainant of the case Sohail Akhtar, Constable has not identified the accused / petitioner.

9. There is only allegation of ineffective firing against the present petitioner/accused. Petitioner has not caused any injury to any member of police party, so the question of sharing common intention with his co-accused shall be determined by the learned trial Court after recording evidence. Reliance can be placed on the case of “***Mumtaz Hussain Vs. The State***”(**1996 SCMR 1125**).

10. As far as the argument of learned State Counsel that the accused remained fugitive from law is concerned, in this regard law is very much

clear, it is held by the Hon'ble Supreme Court of Pakistan in case titled as ***"Mitho Pitafi V. The State" (2009 SCMR 299)***, that ***"Bail could be granted, if accused had good case for bail on merits and mere his absconsion would not come in the way while granting him bail"***. The same principle has been laid down in cases titled as ***"The State V. Malik Mukhtar Ahmad Awan" (1991 SCMR 322)***, ***"Attaullah V. The State through AG Khyber Pakhtunkhwa and another" (2020 SCMR 451)*** and ***"Khalid Umar V. Syed Athar Iqbal, Chairman Pakistan Overseas Employment Promoters and another" (2011 SCMR 1555)***.

11. 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 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

12. 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)”**.

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 02 months. The 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. 100,000/- (One 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.

(AAMER FAROOQ) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE

Ahmed Sheikh