

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

Crl. Misc. No.540-B-2021

Intizar Husain

Versus

The State and another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	22.06.2021	Raja Rizwan Abbasi, Advocate for the petitioner. Mr. Zahid Asif Ch., Advocate for respondent No.2. Ms. Khadija Ali, State Counsel. Fakhar Abbas, S.I, P.S Nilore, Islamabad.

MOHSIN AKHTAR KAYANI J. Through the instant petition, the petitioner is seeking his post arrest bail in case FIR No.12, dated 15.01.2021, under Sections 302/34 PPC, P.S Nilore, Islamabad.

2. Brief facts referred in the instant F.I.R lodged on the complaint of Amjad Hussain/respondent No.2 are that on 15.01.2021 at about 03:00 pm, Khawar armed with Kalashnikov, Intizar armed with .30 bore pistol and Iqrar Akhtar armed with Kalashnikov attacked upon his house and resorted to firing, in the meanwhile his brothers Asad and Rashid also reached at the spot and they started requesting the accused persons to stop firing, whereupon Iqrar Akhtar has directed his two sons to murder them, on which accused Khawar armed with Kalashnikov made a straight fired upon Rashid on his abdomen, who fell down and the other accused persons

continued firing on his house. The motive is the previous dispute of car crossing, upon which the parties have exchanged hot words and extended threats.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case, even the complainant has thrown wider net by implicating the real father and two real brothers in this case, although the father of the petitioner was declared innocent by the police after thorough investigation and probe whose presence has not been justified by the complainant on spot. It has further been contended that with the alleged recovered .30 bore pistol, only three crime cartridges have been matched, which create a ground of further inquiry in the instant case, even no overt act of causing any injuries to the deceased has been attributed, except firing at the house. The incomplete challan has been prepared in this case, but the same has not yet been forwarded to the Court.

4. Conversely, learned State Counsel assisted by the counsel for Complainant contends that petitioner has been nominated directly with the specific role of causing firing with .30 bore pistol at the house of the Complainant and shared common intention with the principal accused, who committed murder of deceased Rashid, even recovery has been made on the pointation of the petitioner, which connects the petitioner with the hideous crime of alleged murder, in such like situation, bail should not be granted.

5. Arguments heard and record perused.

6. Perusal of record reveals that case F.I.R No.12 dated 15.01.2021, under Sections 302/34 PPC, P.S Nilore, Islamabad was registered on the complaint of respondent No.2 Amjad Hussain, who alleged that petitioner armed with .30 bore pistol alongwith his brother Khawar and father, who were armed with Kalashnikov and resorted the firing upon the house of the Complainant, who have been stopped by brothers of the Complainant namely Asad and Rashid to stop the firing, but the petitioner's father Iqrar Akhtar raised *Lalkara* and commanded his two sons to murder them, on which, one of the accused Khawar made a straight fire with his Kalashnikov on the abdomen of Rashid, who was injured and succumbed to injuries during the said incident.

7. The facts narrated in this case discloses that petitioner was allegedly armed with .30 bore pistol and resorted firing, though no firearm injuries has been attributed to the petitioner, rather it is the case where only petitioner's presence was referred at the place of murder of deceased Rashid at the hands of co-accused Khawar.

8. The investigation of this case reveals that father of the petitioner namely Iqrar Akhtar has been declared innocent after thorough probe and inquiry due to his non presence at the place of occurrence on the basis of CCTV footage record of the DC Office, Islamabad as well as CDR, which create ground of further inquiry in the entire case.

9. Forensic reports dated 30.03.2021 and 28.04.2021 prepared by National Forensic Agency, also reveals that only three crime cartridges have been matched with the recovered pistol, whereas remaining cartridges of .30 bore pistol has been fired through some other pistol, such aspect demonstrates that more than two pistol of .30 bore were used, though the investigation is silent to that extent, therefore, instant case falls within the ambit of further inquiry in terms of Section 497(2) Cr.P.C.

10. In this backdrop, it is prima facie admitted position on record that the petitioner has not caused any injury to the deceased or witness, vicarious liability of alleged occurrence, would be determined by the Trial Court after recording evidence. The allegation against the petitioner is of generalized nature and there is no specification of injury attributed by the Complainant, such aspect covers under Section 497(2) Cr.P.C, where bail is allowed. Reliance is placed upon 2014 SCMR 1347 (Muhammad Irfan Vs. The State and others), 1989 MLD 4079 Lahore (Ehsan Ahmad Vs. The State), 2005 YLR 2418 (Haji Muhammad Yousaf Vs. The State and another). The petitioner is previously non-convict and has never been involved in any other case, who is behind the bars since 18.03.2021 without any progress and conclusion of the trial. Investigation of the case has been completed and accused is no more required for further investigation, his further incarceration in jail would not serve any useful purpose. Mere heinousness of offence was no

ground to refuse the bail to accused, who had become entitled for concession of bail in terms of further inquiry covered under sub Section 2 of the Section 497. Reliance is placed upon 2017 YLR Note 229 [Lahore] (Zahid Saleem Shah Vs. The State and another). Even the apex Court has highlighted certain parameters to consider the bail application in cases of offences punishable with death, imprisonment for life or imprisonment for ten years, in result of the same, if some benefit of reasonable doubt or role attributed to the accused has created a certain exceptions or in cases of vicarious liability, bail should have been granted. Reliance is placed upon 2010 SCMR 1861 (Mudassar Altaf Vs. The State).

11. For what has been discussed above, the instant petition is Allowed and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN