

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

Crl. Misc. No.224-B/2020

Muhammad Ramzan

*versus*

The State & another

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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14.04.2020

Mr. Shahid Kamal Khan, Advocate for petitioner.

Rao Muhammad Akram Khurram, Advocate for Respondent No.2 (complainant)

Ms. Bushra Tariq Raja, State Counsel.

Ghulam Rasool, S.I., P.S. Lohi Bher, Islamabad.

**MOHSIN AKHTAR KAYANI, J:** Through this criminal miscellaneous petition, the petitioner has prayed for his post arrest bail in case FIR No.152, dated 27.05.2019, under Sections 302/324/34 PPC, P.S. Lohi Bher, Islamabad.

2. Brief facts as referred in the instant FIR lodged on the complaint of Tariq Mehmood (Respondent No.2) are that on 26.05.2019, at about 6:30 p.m., his brother Muhammad Nisar along with Ameer Abbas (Mason) were busy in construction work at Plot No.611, Street No.11, Phase-IV, Bahria Town, Islamabad, when one Muhammad Irfan, who was shifting bricks on rooftop, was hit by a small stone from above. On this event, he started abusing the said Muhammad Nisar and called 10 to 12 persons, whereafter Muhammad Irfan caught hold of Muhammad Nisar and slapped him, whereas Muhammad Ramzan (present petitioner) injured him with spade, due to which he fell down on ground, while Zahid Iqbal (co-accused) caused a grievous injury on his head with brick. Some of accused persons were caught by the Security Guards of Bahria Town, while some of them succeeded in fleeing away, however Muhammad Nisar succumbed to injuries.

3. Learned counsel for petitioner contends that petitioner is innocent and has falsely been implicated in this case, even the injuries caused to deceased were attributed to co-accused Zahid Iqbal; that the challan has been submitted in court and petitioner is no more required for the purpose of investigation; that one of the co-accused persons has been granted post arrest bail by this Court and as such, principle of consistency is applicable in this case.

4. Conversely, learned counsel for respondent No.2/complainant along with learned State Counsel have opposed the instant post arrest bail application on the grounds that petitioner has been assigned specific role, the charge has been framed and there is every likelihood of early conclusion of trial, hence, the petitioner is not entitled for concession of post arrest bail.

5. Arguments heard, record perused.

6. Tentative assessment of record reveals that petitioner is nominated in case FIR No.152, dated 27.05.2019, registered under Sections 302/324/34 PPC, P.S. Lohi Bher, Islamabad, which is lodged on the complaint of respondent No.2, whereas the role ascribed to petitioner is of causing injury to the deceased with a spade while grievous injury was caused by Zahid Iqbal/co-accused with a brick at the back of deceased's head, who succumbed to injuries in hospital after three days of incident.

7. It has been observed from the postmortem report and initial report of hospital that only one injury was on the body of deceased, therefore, the fact of two separate injuries as alleged by complainant is yet to be determined, although the nature of injuries ascribed by the complainant in the FIR suggests that the fatal injury is attributed to Zahid Iqbal/co-accused, which has been caused through a brick. The said affairs could only be verified during the course of trial when

the medical evidence is brought on record, therefore, the case of petitioner falls within the ambit of further inquiry in terms of Section 497(2) Cr.P.C.

8. The record also reflects the proceedings under Sections 107/151 Cr.P.C. on 27.08.2019 by S.H.O. P.S. Lohi Bher, Islamabad against two persons in shape of Qalandara, which includes five persons on one side, while eight persons, including the co-accused persons, on other side, which further reflects that one of the accused namely Muhammad Irfan also received injuries in said incident. Hence, it is yet to be determined that which party was aggressive in this case.

9. It is trite law that while hearing post arrest bail application, only tentative assessment of material has to be made to ascertain that whether there is no reasonable ground exists to believe that accused had committed a crime, however, if the Court comes to conclusion that no reasonable ground exists for believing that accused has committed a non-bailable offence, he should be granted bail, but the deeper appreciation of incriminating material is not permitted. Reliance is placed upon 1995 SCMR 1249 (Ch. Shujaat Hussain vs. The State) and 1994 SCMR 1283 Government of Sindh vs. Raeesa Farooq, etc.).

10. It is also settled that in case reported as 2016 SCMR 2046 (Muhammad Ramzan vs. The State, etc.) that concession of bail ought not to be withheld by way of premature punishment and keeping the petitioner behind the bars would not serve any useful purpose, especially when the investigation has been completed, challan was submitted in the Trial Court and even charge was framed, but the trial has not yet been commenced, in such circumstances, petitioner would be entitled for post arrest bail. Reliance is placed upon 2004 SCMR 235 (Fazal Ellahi vs. The State).

11. On the other hand, even the medical evidence brought on record does not suggest that the injury attributed to petitioner was a grievous injury caused to the deceased. One of the co-accused i.e. Muhammad Irfan with a lesser role has already been granted post arrest bail by this Court vide order dated 15.11.2019, through Crl. Misc. No.696-B/2019. Although, his role is different, but the principle of consistency applies to some extent in this case.

12. For what has been discussed above, the petitioner is entitled for post arrest bail, therefore, the instant bail application is hereby **ALLOWED** and petitioner is admitted to post arrest bail subject to furnishing of his bail bonds in sum of Rs.200,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

**MOHSIN AKHTAR KAYANI)**  
JUDGE

Khalid Z.