

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

Criminal Misc. No. 10-B of 2021

Muhammad Hayat
Versus
The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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(03)	20.01.2021	Qazi Rehan Shabbir, Advocate for the petitioner/accused. Mr. Zaheer Virk and Sardar Muhammad Khizar, Advocates for the complainant. Mr. Faryad Ali, State Counsel. Abdul Jabbar, Inspector. Wali Khan, A.S.I.
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Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 480/2020, dated 15.08.2020, offences under section 302, 337-F(vi), 337-F(i), 337-F(v), 337-A(ii), 337-A(i), 324, 148, 149, Cross Version, registered at police station Golra Sharif, Islamabad.

02. Brief facts of the prosecution case in hand are that one Khushal s/o Muhammad / complainant reported to police that on 12.08.2020 at about 05:15 p.m. he alongwith his relatives Muhammad Imran s/o Aslam, Muhammad Khushal s/o Muhammad Ali, Hassan Bilal s/o Muhammad Khushal, Sarang s/o Muhammad Ali, Amjad s/o Muhammad Ali, Nazar s/o Ahmed Ali, Zaman s/o Muhammad Aslam, Amjad s/o Muhammad Riaz, Aslam s/o Muhammad were present in their houses which are situated in the same street, upon hue and cry they all came out and saw that Muhammad Azam s/o Mumtaz, Muhammad Mumtaz s/o Ahmed

Ali, Muhammad Hayat s/o Ahmed Ali, Muhammad Yaseen s/o Hayat, Muhammad Sohail s/o Muhammad Nawaz alongwith 5 / 6 unknown persons armed with danddas, sottas, iron rods, knives and hockey sticks etc. were beating the members of complainant party. Whereas, Azam and Hayat raised lalkara and said to their companions that surround and kill all of them, then the accused party started beating the complainant and his companions with iron rods, knives, bricks, hockey sticks, danddas and sottas, whereas Muhammad Azam s/o Mumtaz inflicted injury with iron rod on the head of Aslam s/o Muhammad, the petitioner Muhammad Hayat inflicted churri blow on the arm of Aslam and caused him injury and Muhammad Sohail s/o Nawaz hit a brick on the head of Aslam and caused him injury. All the members of accused party started beating the complainant party. The members of the complainant party got seriously injured and they were taken to the hospital, whereas accused party fled away from the scene and the occurrence has been witnessed by the people of locality. Members of injured party went to the PIMS hospital, wherein they got medical treatment. It is further mentioned that Aslam s/o Muhammad was seriously injured, unconscious and upon the said complaint, the FIR was registered and after the registration of FIR Muhammad Aslam s/o Muhammad died on 17.08.2020.

03. On the other hand, vide report No. 43 dated

15.08.2020, on the complaint of Muhammad Hayat s/o Ahmed Khan, present petitioner cross version was lodged with the contention that on 12.08.2020 at 05:30 p.m. accused of cross version namely Bilal s/o Khushal, Khushal s/o Muhammad Ali, Amjad s/o Muhammad and Nazar s/o Ahmed, in furtherance of their common object / intention constituted unlawful assembly while armed with their respective weapons and attacked upon the accused party of FIR and caused injuries to Mumtaz Ahmed, Muhammad Hayat, Sohail Ahmed, Yasin, Azam, whereupon the cross version was recorded against the complainant party of the FIR.

04. Learned counsel for the petitioner contends that the occurrence took place due to attack launched by complainant party, while the petitioner / accused has no concern with the occurrence and nothing has been recovered during the investigation according to law. He further states that the petitioner is an old man, aged about 55 years, the allegations leveled against the petitioner / accused are false and fabricated. Learned counsel for the petitioner / accused has further contended that the complainant party was aggressor, petitioner and his other companions were seriously injured and the complainant party falsely implicated the petitioner / accused and the accused belongs to a noble family and has not committed any offence.

05. Conversely, learned counsel for the complainant contends that the petitioner / accused

has committed a heinous crime and as a result of his Churri blow on the arm of Muhammad Aslam s/o Muhammad, the later died and the petitioner / accused also raised lalkara and took active part in the commission of crime and is not entitled for the grant of bail after arrest.

06. Arguments heard, record perused.

07. It is admitted fact that it is a case of cross version, both the parties are relatives with each other. There is no previous enmity between the parties. On the said date the instant occurrence was an outcome of sudden flare up. According to the allegation leveled in the FIR, Muhammad Azam s/o Mumtaz inflicted injury on the head of Aslam s/o Muhammad with the iron rod, Muhammad Hayat s/o Ahmed Ali present petitioner inflicted injury with churri on the arm of Aslam and Muhammad Sohail s/o Muhammad Nawaz inflicted injury with brick upon the head of Aslam, and as a result of these injuries, Aslam s/o Muhammad got seriously injured, who subsequently died on 17.08.2020. In MLC of Aslam / deceased only two injuries are mentioned, one is *lacerated wound on frontoparietal region* and the other is *lacerated skin deep wound on occipital region* and the weapon used is mentioned as blunt. In the inquest report, I.O has also mentioned injuries on the head only.

08. There are 5 accused nominated in the FIR, all of them were injured and iron rods, hockey sticks, bricks and knife have been recovered from

the accused, and out of 5 accused nominated in the FIR, 2 have been released on bail after arrest. The present petitioner / accused also got serious injuries and as per medical report, *injury No. (i) is lacerated wound skin to bone deep on vertex, parietal region, injury No. (ii) abrasion right forearm*, and the kind of weapon used was blunt. Whereas, 07 persons from complainant party were injured, danddas and iron rods have been recovered from the accused belonging to complainant party and 05 accused of complainant party have been released on bail after arrest.

09. That the cause of death mentioned in the postmortem report is severe head injury due to assault which caused severe damage to vital organ (brain) of the body but there is no allegation that the present petitioner has caused any head injury, fatal injury is not attributed to the petitioner/accused.

10. Question of aggression has still to be determined. Churri recovered at the instance of petitioner / accused from the kitchen of his house was not blood stained. In the reported case titled as *“Sohaib Mehmood Butt V. Iftikhar-ul-Haq (1996 SCMR 1845)”*, the Hon’ble Supreme Court while providing guidelines for the exercise of jurisdiction in bail matter in the cases of two counter versions arising from the same incident held as under;

“Now what would constitute as sufficient grounds for further inquiry would depend on the peculiar facts of each case and no hard

and fast rule can be laid down for that purpose. Every hypothetical question which can be imagined would not make it a case of further inquiry simply for the reason that it can be answered by the trial Court subsequently after evaluation of evidence. Broadly speaking, the condition laid down in clause (2) of section 497, Cr.P.C. is that there are sufficient grounds for further inquiry into his guilt which means that the question would be such which has nexus with the result of the case and may show or tend to show that accused is not guilty of the offence with which he charged. For example, if accused is charged for offence under section 302, P.P.C. but there are grounds for further enquiry which may show that he may not be convicted of the charge under section 302, P.P.C. but may be acquitted or convicted for a lesser offence.”

“In the counter-versions arising from the same incident, one given by complainant in F.I.R and the other given by the opposite party case-law is almost settled that such cases are covered for grant of bail on the ground of further enquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reason that the question as to which version is correct is to be decided by the trial Court which is

supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed”.

Further reliance in this regard can also be placed on the case titled as **“Mehmood Akhtar and another V. Haji Nazir Ahmad and 4 others (1995 SCMR 310)”**.

11. In view of hereinabove, I am of the opinion that the petitioner/accused has made out a case for grant of bail at this stage as the matter requires further inquiry. Accordingly, the petitioner / accused is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 200,000/- (Rupees Two Hundred Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

12. Needless to observe that the observations made hereinabove are tentative in nature and the learned trial Court shall not be prejudiced by any such observation and shall decide the case on merits in view of the evidence available on record.

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**

Bilal

Approved for reporting.