

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.430/B/2019.

Muhammad Shamraiz

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.
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08.08.2019.	Raja Haroon Qadeer, Advocate alongwith the petitioner. Mr. Muhammad Zafar Khokhar, Advocate for respondent No.2. Barrister Ayesha Siddique Khan, State Counsel. Kamal, Inspector, P.S Koral, Islamabad alongwith record.
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Through this petition, the petitioner has applied for pre-arrest bail in case FIR No.427, dated 24.09.2018, U/S 302, 324, 148, 149, 337-F(i), 337-F(ii)/34, PPC, P.S Koral, Islamabad.

2. Brief facts as referred in the FIR lodged by complainant/respondent No.2/Qamar Ghulam are that on 24.09.2018 he alongwith his father Gulstan Khan, cousin Abbas Tahir, nephew Usman were present in their field near house of Shamrez and were harvesting their crops and his relative Azhar Bhatti was also present when at about 12:30 p.m, Shamrez (present petitioner), Muhammad Nawaz and Riasat armed with Kalashnikovs and three un-known persons armed with .30 bore pistol and 12 bore gun reached near their house and started firing, when firing stopped, the complainant's father Gulstan Khan tried to ask reasons for firing, whereupon Shamrez (present petitioner) raised Lalkara to settle the score with complainant. The petitioner fired upon the complainant's father, which landed on his arm, Muhammad Nawaz and Riasat fired upon Usman, which landed on his abdomen and on different parts of the body,

whereas Javed fired with his Kalashnikov on the right foot of Abbas. Thereafter they took the injured to the hospital, however, in the said incident complainant's father Gulstan Khan succumbed to the injuries.

3. Learned counsel for the petitioner contends that the petitioner has been involved in the instant case with malafide intention and ulterior motive after due consultation with the local police; that the FIR was registered by the police officer, in which no role has been attributed to the petitioner Shamrez but later on the FIR was amended in the computer record with specific role, which itself is criminal offence on part of the police official; that this Court has also observed in its order dated 11.07.2019 that two separate FIRs have been lodged; that the petitioner is innocent and has falsely been implicated in this case; that there is no direct evidence against the petitioner.

4. Conversely, learned counsel for the complainant/respondent No.2 has contended that there was some clerical mistake in the hand written FIR copy, which can be verified from original record of the complaint, wherein specific role has been attributed to the petitioner, who has committed murder; that the petitioner is nominated with specific role in day light occurrence and there is no false implication and the matter has not yet been investigated in proper manner as the petitioner has managed to avail time on one or other reason for the last one year.

5. Learned State Counsel has contended that record is clear qua the role of present petitioner, who has been ascribed role of firing on the deceased and only single FIR has been lodged, whereas two separate copies of the FIR are available on record,

one in hand written of original police register and second the computer generated copy of the system and in case of any dispute qua the facts, the original record of complaint can be seen, wherein the petitioner was charged with hideous crime of murder as such there is no ground of malafide or ill will on part of the police.

6. I have heard the arguments and gone through the record.

7. Perusal of the record reveals that the petitioner is nominated accused in case FIR No.427, dated 24.09.2018, U/S 302, 324, 148, 149, 337-F(i), 337-F(ii)/34, PPC, P.S Koral, Islamabad and ascribed role of causing fire arm injury with Kalashnikov to deceased Gulstan Khan father of the complainant/respondent No.2. In the similar incident three other accused persons have been ascribed role of firing to other witnesses, who have been injured. The petitioner has taken plea that FIR has been amended and his name and role has been mentioned later on and learned counsel for the petitioner tried to convince this Court that two separate FIRs have been lodged and drawn attention of this Court towards earlier order dated 11.07.2019.

8. This case has been argued at length before different Benches of this Court during summer vacation, however, arguments on behalf of State were not advanced, which have been heard today alongwith assistance of learned counsel for both the parties. The record has been perused, whereby prima facie assessment of the record reflects that the petitioner has been ascribed role of direct firing upon the deceased Gulstan Khan with Kalashnikov and in the same incident other P.Ws were also injured.

9. I have also gone through the entire record and it has been observed that the petitioner initially filed his first pre-bail application on 15.11.2018, which was dismissed for non-prosecution on 28.11.2018, where-after he fled away, then obtained transit bail order from Peshawar High Court on 30.11.2018. The petitioner moved his second pre-arrest bail application before learned Sessions Court on 30.05.2019, which was dismissed by learned Additional Sessions Judge (East) Islamabad on 19.06.2019 but he again fled away from the said Court, which shows his conduct and as such he is not entitled for extra ordinary relief of pre-arrest bail as there is no ill will or malafide on part of police and no ground of further inquiry is apparent from the record.

10. The investigation has not yet been concluded and presence of the petitioner is required in the investigation, therefore, instant petition is **dismissed** and ad-interim pre-arrest bail granted to the petitioner vide order dated 27.06.2019 is hereby recalled.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam