

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 73-B of 2020.

Mustafeez.
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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24.02.2020. Sardar Muhammad Tariq Fareed Gopang, Advocate for the petitioner.
Mr Shujah Ullah Gondal, Advocate for the complainant.
Mr Rabi bin Tariq, State Counsel.
Mr Aslam, Inspector with record.

The petitioner Mustafeez son of Abdul Saleem has sought post arrest bail in case, F.I.R. No. 458, dated 13.12.2019, registered under sections 302/324/148/149/34 of the Pakistan Penal Code 1860 (hereinafter referred to as "**PPC**") at Police Station Sabzi Mandi, Islamabad.

2. The brief facts, as alleged in the FIR, are that on 12.12.2019 the petitioner and other co-accused had caused injuries to several students and one of them namely, Syed Tufail later succumbed and lost his life. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case with ulterior motives; there is delay of one day in registration of the instant case; supplementary statement of the complainant was recorded after a delay of three days, wherein the petitioner was falsely accused to have caused injuries; the petitioner is a student of International Islamic University, Islamabad; the co-accused of the petitioner have been granted bail and

thus the petitioner has also been entitled on the touchstone of the rule of consistency; the petitioner has no concern whatsoever with the alleged offences; no incriminating material was recovered from the petitioner; recovery if any is fake and planted; the offences are not attracted against the petitioner; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; the petitioner does not have a criminal record; the case of the petitioner is at par with the other co-accused who have been enlarged on bail; the petitioner is innocent and has not committed any offence; the scope of post arrest bail is wider; the case against the petitioner falls within the ambit of further inquiry; the FIR is false and fabricated; the allegations against the petitioner are false, frivolous and baseless; the petitioner has been incarcerated for more than two months; the case against the petitioner falls within the ambit of section 497(2) of Cr.P.C.; there is no direct or indirect evidence against the petitioner regarding the alleged commission of offence; no motive has been attributed to the present petitioner. Hence prayed for the grant of post arrest bail.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Aslam, Inspector. They have argued that; the petitioner is nominated in the FIR; specific role has been attributed to the present petitioner; recovery has been affected from the petitioner; there is sufficient evidence on record to connect the present petitioner with the commission of the alleged offences; the written complaint was submitted on the day of occurrence and there was no delay on part of the complainant; it is obvious from the medical reports that the offences are attracted. Reliance has been placed on the cases titled "*Tariq Bashir and 05 others vs. The State*" [PLD 1995 S.C. 34] and "*Muhammad*

Rameez vs. The State and another" [2013 YLR 968]. Hence prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The alleged occurrence had taken place on 12.12.2019, whereas the instant case was registered on 13.12.2019. Perusal of the FIR shows that no role was attributed to the petitioner and he was named through a supplementary statement of the complainant recorded later. The offences attracted against the petitioner on the basis of supplementary statement falls within the ambit of non-prohibitory clause. The role of the petitioner definitely requires further probe. Several other accused have been extended concession of bail. Investigation to the extent of the present petitioner has been completed and he is no more required for the purposes thereof. Report under section 173 of Cr.P.C. has not been submitted before the learned trial Court as yet. It is settled law that deeper appreciation of evidence is not undertaken while deciding matters relating to the grant of bail. Whether or not alleged sections are attracted to the extent of present petitioner definitely requires further probe. The petitioner has been incarcerated for more than two months and therefore, his further incarceration would not serve any useful purpose. The petitioner is a student and withholding bail will cause irreparable loss to him because he would be prevented from pursuing his studies. There is nothing on record to show that the petitioner has a criminal record or that there is an apprehension that he may abscond if released on bail. In the facts and circumstances of the case, this Court is satisfied on the basis of tentative assessment that a case for releasing the petitioner on bail is made out.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others vs. The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail 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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is **allowed** and the petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees two hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

CHIEF JUSTICE

*Asad K/**