

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

**Criminal Misc. No. 597-B of 2021**

Waleed Arfaqat

Versus

The State and another.

<b>Sr.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(03)	12.07.2021	M/s Haroon Ur Rashid and Raja Gul Nawaz, Advocates for the petitioner / accused. Mr. Jan Muhammad, Advocate for the complainant. Syed Shahbaz Shah, State Counsel. Fakhar Abbas, S.I.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 252/20, dated 28.11.2020, offence under sections 302, 324, 337-F(iii), 337-D, 148, 149 P.P.C., registered at police station Nilore, Islamabad.

02. Brief allegations against the petitioner / accused are that he along with his co-accused while armed with weapons attacked upon the complainant party due to which Sohail Anjum, Junaid, Zaib and

Aftaar received injuries. Subsequently one of the injured persons namely Aftaar succumbed to the injuries, hence the instant FIR.

03. Learned counsel for the petitioner / accused contends that the instant FIR has been lodged against the present petitioner on the basis of malicious and ulterior motives to receive unlawful benefits; two different roles are mentioned in the FIR regarding participation of petitioner / accused in the occurrence; there is contradiction in Medico Legal Report with the ocular evidence; the indictments as ascribed to the petitioner are absolutely against the facts as well as based on some imbedded malafide on the part of Complainant's side may have been whispered by anyone having ill motive towards the petitioner, otherwise the petitioner has neither any rivalry against the victim nor has any grudge of any manifestation. He has further contended that there was no occasion for the

petitioner to indulge in the stated occurrence; case of the petitioner falls within the ambit of further inquiry; the petitioner / accused is previously non convict. Hence he has prayed for grant of bail after arrest.

04. On the other hand, learned counsel for the complainant as well as State Counsel have controverted the contentions raised on behalf of the petitioner / accused and prayed for dismissal of bail after arrest.

05. I have heard the arguments advanced by learned counsel for the petitioner / accused, learned counsel for the complainant assisted by learned State Counsel and perused the record with their able assistance.

06. In the FIR, initially the complainant has mentioned that the petitioner / accused along with other co-accused while standing in front of the market was raising abuses etc. and again the complainant has mentioned that the petitioner / accused came out from his car along with co-

accused and raised lalkara, the question of two different versions regarding the petitioner will be resolved by the trial Court during the course of trial.

07. There is no allegation against the present petitioner that he caused any injury to Aftar / deceased of the case. It is alleged that the petitioner / accused inflicted fire arm injuries upon Sohail Anjum with 30 Bore pistol. The Medico Legal Report dated 28.11.2020 of Federal Government Services Hospital Islamabad shows that there was 0.5 x 0.5 cm circular wound on scapular region and back of the chest and nature of injury is "Ghayr-Jaifah" (337-C), PPC and the weapon used is mentioned as "Sharp" in the MLR. Subsequently upon application of the complainant party medical board was constituted and following report / opinion dated 18.02.2021 regarding Sohail Anjum was given:-

*"01. 01 cm x 0.5 cm well healed scar in the left scapular region posteriorly.*

*02. Small 0.5 cm well healed scar on left chest posteriorly.*

*03. 02 cm x 02 cm well healed scar left*

*side chest anterolaterally with irregular margins (may be scar of chest tube wound).*

*It is presently not possible to opine about what caused these injuries. It is pertinent to mention here that the physician/ MLO who treated the patient initially will be in a better position to comment on the wounds".*

08. Subsequently the doctor has given the opinion on Medico Legal Report regarding weapon used and mentioned the same as fire arm injury but no date of changing the opinion of MLR has been mentioned. The occurrence took place on 28.03.2020 at 03:00 p.m., FIR was registered on the same day at 06:00 p.m. but surprisingly the police has not conducted the site visit on the same day rather inspected the site on 27.11.2020 and recovered six empties of 30 bore pistol on the next date from a very busy place, which makes recovery of the empties doubtful. The other co-accused namely Adil Basharat has been released on bail after arrest by this Court vide order dated 14.04.2021. The petitioner is also entitled for grant of bail on

the principle of consistency. Reliance is placed on a case titled as "Ghulab Khan Vs. Chairman N.A.B and another" (2020 SCMR 285). The same principle has been laid down in cases titled as "Muhammad Daud and another Vs. The State and another" (2008 SCMR 173), "Sheraz Vs. The State" (2021 MLD 292) and "Muhammad Azam Vs. The State" (2008 SCMR 249).

09. Report of the Forensic Science Laboratory (FSL) regarding pistol and empties recovered from the spot is still awaited.

10. From the contents of FIR, it cannot be out-rightly said that there was a common intention to commit crime, it prima facie appears that PUBG game was the reason that provoked the accused. The conclusion that there was common intention can only be reached after the evidence in the matter comes on the record. Investigation in the case has been completed and the accused is no more required for the purpose of further investigation. The petitioner /

accused is previously non-convict and is behind the bars since 15.04.2021. Trial of accused / petitioner has not seen any fruitful progress as yet, therefore, his further incarceration in jail would not serve any purpose.

11. As far as contention of learned State Counsel, that the petitioner is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in the name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned State Counsel has

not brought on record any material that petitioner / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon a cases titled as "Moundar and others Vs. The State" (PLD 1990 SC 934), "Babar Hussain V. State" (2020 SCMR 871), "Muhammad Rafique Vs. State" (1997 SCMR 412) and "Muhammad Abid Farooq Vs. The State and another" (2015 P Cr. LJ 224).

12. It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail after arrest 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. Reliance is placed on a case reported as "Manzoor and 4 others Vs. The State" (PLD 1972 SC 81)".

13. It is held by the Hon'ble Supreme Court in a case titled as "Zaigham Ashraf Vs. The State and others" (2016 SCMR 18)

that:

*"To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without*

*just cause and reasonable ground”.*

14. A tentative assessment of record shows that present petitioner has made out a case of further inquiry.

15. In view of above, instant petition is **accepted** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 200,000/- (Two Hundred Thousand only)** with two sureties each in the like amount to the satisfaction of learned trial Court.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal \-

**Approved for reporting.**