

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Shahid Waheed

CrI.P.L.A.588/2024

(Against the order dated 20.05.2024 passed by the Islamabad High Court, Islamabad in Criminal Misc. No. 840-B of 2024)

Muhammad Saeed ...Petitioner(s)

Versus

The State thr. A.G. Islamabad and ...Respondent(s)
another

For the Petitioner(s) : Mr. Riaz Hanif Rahi, ASC
Syed Rifaqat Hussain Shah, AOR

For the State : Ms. Chand Bibi, DPG Islamabad
Kaleem Ullah, SHO
Mansab Dar, SI/Investigating
Officer

Date of Hearing : 03.02.2025

ORDER

Yahya Afridi, CJ: The petitioner-complainant seeks leave to appeal against the order of the Islamabad High Court dated 20.05.2024 ("**impugned order**"), whereby pre-arrest bail was granted to the respondent-accused in case FIR No. 308, dated 28.03.2024, registered at Police Station Sangjani, Islamabad, for the offences under Sections 324 and 337-F(ii) of the Pakistan Penal Code, read with Section 13(d) of the Arms Ordinance.

2. According to the FIR, the occurrence allegedly took place on 27.03.2024 at about 8:45 p.m. when Hasham Saeed and Shahzad Saeed, sons of the petitioner-complainant, were on their way home. They were intercepted by the respondent-accused, who was armed with a pistol. The respondent-accused allegedly hurled abuses at them and, with the intention to kill, fired at them. One of the shots struck Hasham Saeed on his left leg, causing him to sustain an injury.

3. The learned counsel for the petitioner-complainant contends that a nine years old child has been injured and his rights have not been properly considered in the impugned order. He further argues that the fact that the respondent-accused was armed with a weapon at the time of the occurrence shows his intent to commit the crime. Additionally, he submits that the impugned order has not taken into account the essential requirements for the grant of pre-arrest bail, in particular the element of *mala fide* on the part of the complainant party. He also maintains that since the pre-arrest bail petition of the respondent-accused was dismissed for non-prosecution and his second pre-arrest bail petition was held not competent by the Sessions Court, the High Court ought not to have entertained the bail petition of the respondent-accused.

4. After hearing the learned counsel for the petitioner-complainant and the learned Deputy Prosecutor-General, Islamabad and going through the record, we observe that the High Court took note of the absence of any crime empty recovered from the place of occurrence. The High Court also observed that there was no dispute regarding the fact that nothing remained to be recovered from the respondent-accused, as the weapon allegedly used in the commission of the offence had already been taken into possession by the police during the investigation. Further, the High Court observed that a tentative assessment of the incriminating material, when considered alongside the stance of the respondent-accused narrated in the cross-version, *prima facie* indicated that the case fell within the ambit of further inquiry. We find this observation to be in accordance with the weight of the material available on record and not contrary to it. The prosecution has at this stage failed to present sufficient incriminating material to connect the respondent-accused with the commission of the alleged offence.

5. As regards the contention that *mala fide* was not properly considered, it is important to note that *mala fide*

cannot always be proved through direct evidence and is often to be inferred from the facts and circumstances of the case.¹ Since the High Court found no reasonable grounds to justify the arrest of the respondent-accused and no sufficient incriminating material to connect him to the offence, the grant of pre-arrest bail was justified in the facts and circumstances of the case.

6. The argument that the High Court ought not to have entertained the bail petition after the Sessions Court found the second bail petition to be not competent is misconceived, as it neither precluded the respondent-accused from filing a fresh bail petition before a higher forum nor barred the High Court from independently assessing the case and granting relief where warranted.

7. The learned counsel for the petitioner-complainant has not been able to show that the impugned order is either perverse or against any settled principle of the law of bail, warranting interference by this Court. The petition for leave to appeal is found meritless; the same is therefore dismissed and leave to appeal declined.

Chief Justice

Judge

Islamabad
03.02.2025
APPROVED FOR REPORTING

¹ *Shahzada Qaiser Arfat v State* PLD 2021 SC 708.