

8/24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

Criminal Petition No.1329 of 2023

[Against order dated 11.10.2023, passed by the Lahore High Court, Multan Bench, Multan in Criminal Miscellaneous Nos.6567-B of 2023 and 6296-B of 2023]

***Mujahid Hussain son of Ghulam Muhammad ...Petitioner(s)
and another.***

Versus

***The State through Prosecutor General, ...Respondent(s)
Punjab, Lahore and another.***

For the Petitioner(s) : Sardar Muhammad Latif Khan
Khosa, Sr.ASC

For the Complainant : Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For the State : Mr. Muhammad Jaffar, Additional
Prosecutor General, Punjab
Amjad Khalid, Inspector
Kazam Munir, SI
(via video link from Lahore)

Date of Hearing : 19.01.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J:- Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, the petitioners, namely, Mujahid Hussain and Hussain Bakhsh have assailed the order dated 11.10.2023, passed by the learned Judge of the Lahore High Court, Multan Bench, Multan **(the High Court)** whereby through Criminal Miscellaneous Nos.6567-B of 2023 and 6296-B of 2023 post arrest bail was declined to them.

2. Succinctly, facts of the case are that the petitioners were arrested in case FIR No.721 dated 04.07.2023 lodged by Muhammad Babar son of Noor Hussain, registered under Sections 302, 324, 148, 149 and 109 PPC at Police Station Rohilan Wali, District Muzaffargarh,

stating therein that on 03.07.2023 at about 11:30 P.M. the complainant along with Muhammad Nadir, his brother and Muhammad Ilyas son of Muhammad Bakhsh, caste Ratheeb went to the house of their relative Mureed Hussain, situated at Chan Mor Chowk for wishing Eid Greetings where Nazar Hussain son of Allah Bakhsh and Ejaz Hussain son of Muhammad Bakhsh caste Ratheeb residents of same village were also present. After a while they all were going to drop Muhammad Ilyas to his house when they reached Chan Mor Chowk, in the meanwhile accused Hussain Bakhsh and Sadiq Raza, sons of Muhammad Sharif, caste Darkhan, armed with Rifle type arms, Mujahid Hussain son of Ghulam Muhammad, caste Jarh, armed with Rifle type arm, Abdul Wahid Nasir son of Noor Muhammad caste Darkhan, armed with .30 Bore Pistol, residents of *Mouza Jurh Ratheeb*, Abdul Aziz son of Allah Wasaya, caste Darkhan, resident of Manak Pur, with Rifle type arm and Mst. Shamshad Mai, wife of Riaz Hussain, caste Darkhan, resident of Manak Pur, while boarding on a car as well as motorcycle came there and Mst. Shamshad Mai raised a *lalkara* that the complainant's party has disgraced her today therefore, none of them should be spared. Hussain Bakhsh started straight firing on Muhammad Nadir, which hit him on left side of his chest, whereas Mujahid Hussain also started firing from his rifle type weapon which hit Muhammad Nadir on right side of his chest who succumbed to the injuries at the spot. Sadiq Raza fired from his rifle which landed on the left wrist beneath the elbow joint. Abdul Wahid fired at Nazar Hussain with his pistol, which landed on the left side of the ribs of Nazar Hussain. Abdul Aziz also made straight firing from his rifle on Ejaz Ahmed but fortunately he escaped upon which Abdul Aziz attacked Ejaz Ahmed with his rifle and hit the *butt* of his rifle on his head, which landed on his head near left ear. The people of the vicinity gathered at the spot in consequence of hue and cry and firing. The witnesses Muhammad Qasim, Asif Iqbal and other inhabitants reached at the spot,

the accused persons fled away from the place of occurrence. The motive behind the occurrence was a civil dispute over a house in between Ejaz Ahmed and Mst. Shamshad Mai.

3. The petitioners were arrested by the police on 25.07.2023. They filed applications for grant of post arrest bail in the Court of learned Additional Sessions Judge, Muzaffargarh, which were dismissed *vide* order dated 13.09.2023.

The petitioners and other co-accused, namely, Sadiq Raza and Abdul Wahid Nasir applied for the grant of post arrest bail before the High Court by filing Criminal Miscellaneous Nos.6567-B of 2023 (Mujahid Hussain etc. vs. The State) and 6296-B of 2023 (Abdul Wahid Nasir etc. vs. The State) which were decided together, the post arrest bail was refused to the petitioners, whereas to that of co-accused persons, namely, Sadiq Raza and Abdul Wahid Nasir was granted *vide* impugned order dated 11.10.2023; hence these petitions.

4. The learned counsel for the petitioners argued that the petitioners have falsely been roped in the case by the complainant with *mala fide* intention in connivance with the police, after suppressing the real facts. Further argues that during the course of investigation, the contents of the crime report were contradicted and an entirely different story was surfaced on record.

5. It has brought on record and confirmed by the learned Additional Prosecutor General, Punjab that on the recommendation of the Regional Standing Board (RIB), Dera Ghazi Khan, the investigation of the case was entrusted to Inspector-RIB, Dera Ghazi Khan, who submitted its report to SP-RIB who concurred with the investigation report of Regional Investigation Branch Dera Ghazi Khan. *Vide* Order No.148-RIB dated 13.01.2024 passed by the DPO, Dera Ghazi Khan, whereby both the petitioners were discharged along with other co-accused. Lastly contended that keeping in view the facts and

circumstances of the case, after submission of the comprehensive report by the investigating agencies, it is a case of further enquiry which falls within the ambit of subsection 2 of Section 497 Cr.P.C. In support of his contentions, following case law has been cited:-

In the case of Muhammad Umer Waqas Barkat Ali vs. The State (2023 SCMR 330), this Court has held as under:-

“It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be taken away merely on bald and vague allegation. It is the case of two versions and it is established principle of law that where there is a case of two versions narrated before court, it squarely falls within the ambit of section 497(2)”.

In the case of Fahad Hussain vs. The State (2023 SCMR 364), this Court held as under:

“The perception and discernment of the expression “further inquiry” is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The raison d’etre of setting the law into motion in the criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at bail stage, if the facts of case so warrant. The basic philosophy of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time.

In the case of Gul Muhammad vs. Th State (2023 SCMR 857), this Court held as under:-

“This Court has time and again held that liberty of a person is a precious right, which cannot be taken away unless there

are exceptional grounds to do so. Merely on the Basis of bald allegations, the liberty of a person cannot be curtailed. In these circumstances, the petitioner has made out a case for bail as his case squarely falls within the purview of Section 497(2), Cr.P.C entailing for further inquiry into his guilt.

6. On our query, Mr. Muhammad Jaffar, Additional Prosecutor General, Punjab confirmed the discharge of the petitioners by the Regional Investigation Branch, Dera Ghazi Khan as per final report dated 13.01.2024. The Law Officer has supported the contentions of the learned counsel for the petitioners *qua* exoneration/discharge of the petitioners by the Regional Standing Board, Dera Ghazi Khan and confirmation of the approval of the final report dated 13.01.2024 by the DPO Dera Ghazai Khan, referred to above; a copy thereof has been placed before us at the time of hearing of the case.

7. Mr. Aftab Alam Yasir, learned counsel while arguing the matter on behalf of the complainant has vehemently opposed the grant of post arrest bail to the petitioners and placed reliance to the cases reported as Amir Faraz vs. The State (2023 SCMR 308), Muhammad Rafique vs. The State and others (PLD 2022 SC 694), Mudassar Altaf and another vs. The State (2010 SCMR 1861) and Muhammad Aslam and others vs. The State (PLD 1967 SC 539).

8. We have heard the learned counsel for the parties so also the learned Law Officer and scanned the entire material available on the record with their able assistance.

9. It reflects from the record that on the recommendation of the Regional Standing Board, Dera Ghazi Khan, the investigation was changed and fresh investigation was conducted by the Inspector-RIB under the supervision of the SP-RIB. The investigating agencies on the basis of the material available on the record came to the conclusion that both the petitioners and other co-accused be discharged, final report whereof was submitted to the trial Court but no order has been passed

as yet in view of the impugned order of the High Court. The DPO, Dera Ghazi Khan has endorsed the same *vide* Order No.148-RIB dated 13.01.2024.

10. We are convinced that the case law cited at the bar by the learned counsel for the petitioners is true exposition of law, whereas the law cited at the bar by the learned counsel for the complainant is distinguishable to the facts and circumstances of the present case.

11. In view of the above, we inferred that it is a case of two versions one narrated by the complainant's party in the FIR and the second by the investigating agencies on behalf of the State after conducting fresh investigation under the supervision of an SP and the final report has been approved by the DPO, Dera Ghazi Khan. The petitioners have made out a case for grant of bail as their case squarely falls within the purview of Section 497(2) Cr.P.C.

12. Consequently, this petition is converted into an appeal and allowed. The petitioners are admitted to post arrest bail subject to furnishing their bail bonds in the sum of Rs.100,000/- each with one surety in the like amount to the satisfaction of the trial Court.

13. The above observations are tentative in nature and will have no bearing upon subsequent proceedings during the trial as the trial Court is required to decide the case on its own merits without being influenced by any observation made in this judgment.