

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 150-L OF 2023

(On appeal against the order dated 20.01.2023 passed by the Lahore High Court, Lahore in Crl. Misc. No. 3872-B/2023)

Saad Zia

... Petitioner

Versus

The State etc

... Respondent

For the Petitioner: Mr. Sahir Mehmood Bhatti, ASC along with petitioner

For the State: Mirza Abid Majeed, DPG
Mr. Saeed, SI

For the Complainant: In person

Date of Hearing: 20.06.2023

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 20.01.2023 passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 79/2019 dated 14.02.2019 under Sections 302/324/148/149 PPC at Police Station Saddar Wazirabad, District Gujranwala, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that on 14.02.2019, the complainant along with his sons went to a marriage hall to attend marriage of his niece. While the complainant and his sons were entering in the hall, the petitioner along with other co-accused while armed with pistol, who were already sitting in the hall, raised lalkara to kill them. The co-accused of the petitioner namely Qasim Ali and Ehtesham made straight firing upon the complainant and his son, which landed on the

neck of son and left foot of the complainant. The assailants also resorted to indiscriminate firing due to which several other persons sustained injuries.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that it is a case of two versions squarely falling within the ambit of Section 497(2) Cr.P.C. Contends that during investigation, the petitioner was found to be empty handed at the time of occurrence and was placed in column No. 2 in report under Section 173 Cr.P.C. Lastly contends that the learned High Court while declining bail to the petitioner has not followed the guidelines issued by this Court for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioner may be granted bail.

4. On the other hand, learned Law Officer assisted by the complainant in person opposed the petition by contending that the petitioner has specifically been nominated in the crime report, further he remained absconder for a considerable period of time, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. As per the contents of the crime report, the allegation against the petitioner is that he along with co-accused while armed with pistol launched an attack on the complainant party and resorted to indiscriminate firing due to which several persons sustained injuries. We have noticed that though a generalized allegation of causing indiscriminate firing has been alleged against the petitioner, however, during the course of investigation, it transpired that the petitioner was empty handed at the time of occurrence and he has not been ascribed any overt act. This opinion of the Police has not been challenged, rather the petitioner was placed in column No. 2 of the report furnished under Section 173 Cr.P.C. This is established principle of law that mere the fact that a person is nominated in the crime report does not dub him as an accused unless and until during the course of investigation the accusation against the said person is found to be correct. In a salutary

judgment reported as F.B. Ali Vs. The State (PLD 1975 SC 506), this Court held as under:-

“Mere lodging of information against a person does not make him an accused nor can a person be called accused against whom investigation is conducted by Police.”

7. It is the stance of the petitioner that in-fact complainant party was aggressor and two persons from the petitioner's side sustained injuries during the occurrence, which were suppressed by the complainant side. So far as the argument of the learned Law Officer about the absconsion of the petitioner is concerned, it is settled law that absconsion cannot be viewed as a proof for the offence. In Rasool Muhammad Vs. Asal Muhammad (PLJ 1995 SC 477) this Court has held that mere absconsion cannot be made a ground to discard the relief sought for as disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly. Reliance is also placed on Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53). It is an admitted position that the petitioner himself surrendered before the law and joined investigation. In these circumstances, it is the Trial Court, who after recording of evidence would decide about the guilt or otherwise of the petitioner and till then the petitioner cannot be put behind the bars for an indefinite period. This court has time and again held that liberty of a person is a precious right, which cannot be taken away merely on the basis of bald allegations. The petitioner is a student having no criminal history and keeping him behind the bars with the hardened criminals would not be in the interest of justice. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

8. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order and confirm *ad interim* pre-arrest bail granted to the petitioner by this Court vide order dated 01.06.2023.

JUDGE

JUDGE

Islamabad, the
20th of June, 2023
Approved For Reporting
Khurram