

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 324 OF 2020

(Against the order of the Lahore High Court, Rawalpindi Bench Rawalpindi dated 02.01.2020 passed in Crl. Misc. 2218-B of 2020)

Muhammad Faisal

... **Petitioner**

Versus

The State and another

... **Respondents**

For the Petitioner : Umar Aasdullah, ASC

For the Complainant Complainant in person.

For the State : Syed Ahmad Raza Gillani, APG and
Saeed I.O.

Date of Hearing : 05.05.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Petitioner

has assailed the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 calling in question the order of learned Lahore High Court, Rawalpindi Bench Rawalpindi dated 20.01.2020 with prayer to grant leave against the order and to release the petitioner on post arrest bail in the interest of justice.

2. The petitioner alongwith others was involved in case bearing FIR No.524/2019 dated 05.08.2019, registered with police station Gujar Khan, District Rawalpindi.

As per allegation contained in the crime report, it is alleged that petitioner while armed with pistol .30 bore resorted to two consecutive fire shots which landed on right knee and below the right knee on left side of injured PW.

3. *At the very outset, learned counsel for the petitioner argued that the injuries ascribed to the petitioner are exaggerated by the prosecution. Contends that dimension of injury No.2 commensurate with injury No.1 which shows that both the injuries are in continuation of each other. Further contends that the injured PW was admitted in the hospital, however, he was discharged on the following day which fact in isolation reflects that the injured PW was not suffering from any serious injury. It has been further argued that declaration of injury was made at a belated stage with the delay of eight months which speaks volume qua its authenticity. Lastly it has been argued that even if it is assumed that the injuries has been caused by the petitioner, still it do not fall within the prohibitory clause of section 497 Cr.P.C. entitling the petitioner for the relief sought for.*

4. *On the other hand, the injured PW present in person has stated that he sustained two fire shot injuries by the hands of the petitioner. He was admitted in the hospital for a considerable time where he was operated upon; hence, petitioner is not entitled for the grant of bail.*

5. *We have heard the learned counsel for the parties and gone through the record.*

As per prosecution version contained in the FIR, though the petitioner has been attributed two fire shots on non-vital part of the body of injured PW, however, dimension and locale of injuries

portray that possibility cannot be ruled out that injuries No. 1 & 2 are in continuation of each other. Perusal of record further reveals that the petitioner was admitted in hospital on 19.08.2019 while he was discharged on the following day i.e. 20.08.2019. The statement of injured PW that he has undergone surgical intervention is not substantiated from the record. The injury ascribed to the petitioner has been declared falling under section 337 F(vi) PPC which entail as per statute maximum punishment of seven years. There is no denial to this fact that the declaration of injury was made after the lapse of eight months i.e. on 04.05.2020, during the pendency of instant petition before this Court. The accumulative effect of all these facts and circumstances create doubt regarding truthfulness of prosecution version. It is established principle of law that benefit of doubt can even be extended at bail stage.

6. *As far as the question of applicability of section 324 PPC is concerned, undeniably, the injuries are on non-vital part against a motive which is feeble in nature, hence, we are constrained to give any finding lest it may prejudice case of either party, however, it would be resolved by the learned trial court after recording of evidence during the course of proceeding before it. Keeping in view all the facts and circumstances and while seeking guidance from judgment of this Court titled as "Muhammad Umar vs. the State and another" (PLD 2004 Supreme Court 477), we are of the considered view that the case of the petitioner is of "further inquiry" falling within the ambit of section 497(2) Cr.P.C. Otherwise, liberty of a person is a precious right which has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973.*

7. As a consequence of the facts and circumstances surfaced on the record, we are persuaded to grant leave in this case. As such, Criminal Petition is converted into appeal, same is allowed; the petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court/Duty Judge.

8. Before parting with the order, it has been made clear that the observations made hereinabove are tentative in nature and it has no bearing during the course of proceedings before the learned trial court.

Judge

Judge

Islamabad,
05.05.2020
Approved for reporting
Athar