

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.252 OF 2020

(Against the order of the Lahore High Court, Bahawalpur Bench, Bahawalpur dated 22.01.2020 passed in CrI.Misc. (No. 3350-B/2019))

Babar Hussain

... **Petitioner**

Versus

The State and another

... **Respondents**

For the Petitioner : Mr. Qadeer Ahmad Rana, ASC

For the State : Mirza Usman, DPG Punjab with Shafqat SHO, police station Manchanabad.

Date of Hearing : 13.04.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI:- Petitioner

Babar Hussain has sought leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the order of learned Lahore High Court, Bahawalpur Bench, Bahawalpur dated 22.01.2020 by which the petition for post arrest bail was declined in case FIR No.106/2018 dated 07.03.2018, registered with police station Manchanabad, District Bahawalnagar.

2. As per allegations, contained in the crime report, it is alleged that the petitioner and his co-accused committed theft of dry batteries from Ufone Tower and during the occurrence, his co-accused Attaullah was murdered. The petitioner was saddled with responsibility of alleged crime. In response to the crime report, the petitioner was taken into custody by local police. He applied for post arrest bail before learned trial court which was declined vide order

dated 12.11.2019; the same was assailed before learned High Court through Crl. Misc. No. 3350-B of 2019 which too met the same fate, hence, this petition.

3. *The crux of the arguments advanced by the learned counsel for the petitioner is that there is allegation of generalized nature of resorting to indiscriminate firing against all the accused persons nominated in the crime report. They indulged in such an act when they were confronted by the security staff deployed over there after hearing voice of safety alarm installed there. The accused persons escaped from the scene of occurrence while resorting to indiscriminate firing which as per prosecution case ultimately had hit Attaullah who succumbed to the injuries after five to seven days. There is no denial to this fact that allegation of firing is ascribed to all the accused while escaping from the scene of occurrence. The statement of Attaullah deceased coupled with the application moved by widow of deceased to District Police Officer alleged that the firing was made by the petitioner before this Court. As far as the culpability of deceased as alleged in the crime report is taken into consideration, whereas the veracity of other story advanced by the deceased while making dying declaration couple with the application moved by widow of the deceased to the District Police Officer, it cannot be adjudicated at this juncture of time rather it would be decided by learned trial court after recording of evidence during the course of trial.*

4. *As far as the contention of learned Law Officer that the petitioner is involved in six other criminal cases would not disentitle him from the relief sought for as learned Law Officer frankly*

conceded that petitioner has not been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance in this regard is placed upon cases titled as "Moundar and others vs. The State" (PLD 1990 S.C. 934) and "Muhammad Rafique Vs. The State" (1997 SCMR 412). As the allegation against the petitioner is of two versions, one advanced in the crime report, the other brought on the record in the shape of statement of Attaullah deceased as well as mentioned in the application filed by the widow of the deceased, it would squarely bring the case of the petitioner within the ambit of further inquiry falling under section 497(2) Cr.P.C. entitling him for the relief sought for. Otherwise liberty of a person is a precious right which has been guaranteed in the Constitution of Islamic Republic of Pakistan, 1973. Keeping in view the facts and circumstances brought on the record, we are persuaded to grant leave in this case. As a consequence, Criminal Petition is converted into appeal, same is allowed; the petitioner shall be released on bail subject to furnishing of 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.

Judge

Judge

Islamabad,
13.04.2020
Approved for reporting
Athar