

Form No: HCJD/C-121

**ORDER SHEET**

**IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**Crl. Misc. No. 5564-B of 2024**

**Bilqees Bibi      Versus      The State etc.**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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**02-05-2024** Hafiz Syed Fahad Iftikhar, Advocate for the petitioner.  
Mr. Abdul Rauf Wattoo, DPG with Faisal, SI.  
Ch. Zeeshan Afzal Hashmi, Advocate for the  
complainant.

Through this petition filed under section 497,  
Cr.P.C., the petitioner, entreats post-arrest bail in case  
FIR No. 1508, dated 28-09-2023 for offences under  
sections 302, 148, 149, 109 and 311, PPC registered at  
Police Station Dhully, District Gujranwala.

2. Tersely, facts of the case are that complainant was  
resident of *Dhullay wala* and labourer by profession. The  
brother of the complainant namely Zaigham Abbas  
contracted love marriage with Mst. Laiba Bibi daughter  
of Muhammad Sabir 19/20 days prior to the occurrence,  
due to which, family members of Mst. Laiba Bibi were  
annoyed. On 27.09.2023 at about 07.00 p.m. Kaneez  
Bibi, mother of Laiba, came to the house of complainant  
party and stated that she has convinced her family  
members qua marriage of Mst. Laiba Bibi, therefore, they  
are invited on feast tomorrow at her home, upon which,  
the complainant and her family members went to the  
house of Mst. Kaneez Bibi on 28.09.2023 at 12.45 p.m.  
She (Kaneez Bibi) made sitting arrangements of the  
complainant, her father, maternal uncle and cousin in the  
courtyard, whereas, Naseem Akhtar, Zaigham Abbas and

Laiba Bibi sat in the room. The accused Muhammad Sabir, Kaneez Bibi and Balqees Bibi were already present in the room. In the meantime, after almost ten minutes, petitioner's co-accused namely Muhammad Usman and Muhammad Arslan armed with 30 bore pistols come down from the stairs, upon which, the petitioner and her co-accused namely Muhammad Sabir and Kinza Bibi chanted *lalkara* that they be done to death and nobody should be let alive, whereupon, Usman and Arslan co-accused of the petitioner made straight firing upon Naseem Akhtar, Zaigham Abbas and Mst. Laiba Bibi. Upon receipt of injuries they all fell down and breathed their last at the spot. The accused decamped from the spot while brandishing their weapons. Hence this case.

3. It is contended by learned counsel for the petitioner that only joint *lalkara* is attributed to the petitioner. The petitioner is a woman aged about 50 years and has been involved in this case by widening the net.

4. Conversely, learned Deputy Prosecutor General assisted by learned counsel for the complainant argued that the petitioner is nominated in the FIR with the active role of hurling commanding *lalkara*. Three innocent persons have been done to death in this case. The petitioner is involved in a heinous offence and has been found fully involved in the commission of crime, during the course of investigation, for the reason she is not entitled for the relief of bail after arrest.

5. I have heard learned counsel for the petitioner, as well as, learned Deputy Prosecutor General assisted by

learned counsel for the complainant at length and perused the record minutely with their able assistance.

6. After going through the narration of FIR and the evidentiary material collected by police and presented before this Court, it divulges that the petitioner has been saddled with the responsibility of raising a joint *lalkara* directing her co-accused to kill the complainant party and thereafter co-accused of the petitioner namely Usman and Arslan made straight firing upon Naseem Akhtar, Zaigham Abbas and Mst. Laiba Bibi, causing their death. Although tentative assessment of evidence is to be made while deciding the bail application and deeper appreciation of evidence is not permissible nor desirable but the benefit of doubt can be extended in favour of accused even at the bail stage. In a pronouncement of apex court of our country in case titled as “Resham Khan and another vs. The State through Prosecutor General Punjab, Lahore and another” (2021 SCMR 2011) has held that while granting post arrest bail even the benefit of doubt can be extended to the accused. The relevant portion of the supra mentioned Order is reproduced hereunder:-

“....The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the

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.....

Similar view has also been reiterated in the cases reported as Muhammad Sarfraz Ansari vs. The State and others (PLD 2021 SC 738), Ali Raza vs. The State and others (2022 SCMR 1245), Muhammad Arshad vs. The State and another (2022 SCMR 1555), Salman Zahid vs. The State through P.G. Sindh (2023 SCMR 1140), Naveed Sattar vs. The State and others (2024 SCMR 205) and Fahad Hussain and another vs. The State through Prosecutor General Sindh (2023 SCMR 364).

7. It has been observed by this Court that according to the story of FIR, co-accused Kaneez Bibi called the complainant party at her house on the pretext of feast at their honour and after their arrival in her house approximately after ten minutes occurrence took place. As per prosecution case when it was the intention of accused party to murder the complainant party then *prima facie* question of hurling joint lalkara does not arise because it was rather to alert the complainant party to flee away from the place of occurrence. It has been well settled by now that while deciding the bail application even the merits of the case can be touched upon. A reference in this context may be made to the cases of “Khair Muhammad and another vs. The State through PG Punjab and another” (2021 SCMR 130), “Abdul Rehman alias Muhammad Zeeshan vs. The State and others” (2023 SCMR 884), “Saeed Zia vs. The State and others” (2023 SCMR 1898) and “Rehman vs. The State and others” (2023 SCMR 2081).

8. It is not discernable from the perusal of the F.I.R. and evidentiary material collected by the police that co-accused of the petitioner namely Usman and Arslan needed any command of the petitioner to actuate their intention of causing death of supra mentioned persons. Moreover, it is not the case of prosecution that the petitioner facilitated her co-accused in any manner at the time of occurrence. Such type of allegation is very easy to level but very difficult to prove. The culpability of petitioner in the commission of crime will be best determined by the learned trial court after recording and evaluating the evidence. At this stage case of the petitioner squarely falls within the precincts of further inquiry as contemplated under sub-section (2) of section 497, Cr.P.C. A reference in this respect may be made to the cases of Tariq Zia vs. The State (2003 SCMR 958), “Qurban Ali vs. The State and others” (2017 SCMR 279) and Sher Afzal vs. The State and another (2022 SCMR 186).

9. According to the prosecution story the petitioner was empty handed and did not make any attempt to cause any injury to the deceased, her role became distinguishable from those who had caused injuries to the deceased. Now a days' it has become a trend of our society to falsely involve the entire family by ascribing them the role of *Lalkara*, abetment, Japha and ineffective firing. The petitioner and her co-accused are related to each other and in that milieu spreading the net wide by the complainant party so as to falsely implicate the petitioner in the present criminal case appears to be a possibility which cannot safely be ruled out of the consideration at this stage. Reliance is placed upon the

following case laws Malik Waheed alias Abdul Hameed vs. The State and another (2011 SCMR 1945), Subeh Sadiq alias Saabo alias Kalu vs. The State and others (2011 SCMR 1543), Muhammad Shafi and others vs. The State and others (2016 SCMR 1593), Abdul Rehman alias Muhammad Zeeshan vs The State and others (2023 SCMR 884) and Ch. Saeed Ahmad Khalid vs. The State and others (2023 SCMR 1712).

10. So far as the contention of learned counsel for the complainant that the petitioner is vicariously liable for the commission of crime is concerned, it is noteworthy that question of vicarious liability would only be determined by the trial court after having recourse to evidence of the parties and bail cannot be withheld as punishment when her case squarely falls within the ambit of further inquiry. Guidance is hereby sought from the following case laws reported as Wajid Ali vs. The State and another (2017 SCMR 116) and Muhammad Ameen vs. The State and another (2022 SCMR 1444).

11. Learned Deputy Prosecutor General has vociferously argued that it is a triple murder case and the offence with which the petitioner has been charged falls within the ambit of prohibitory clause of section 497 Cr.P.C. and it is a heinous offence, for the reason, she is not entitled for concession of bail. I am not in agreement with this contention because it is well settled proposition of law that mere heinousness of offence is no ground for declining the relief of bail to an accused, who otherwise becomes entitled for the concession of bail. Wisdom is derived from the case-law titled as Nasir Khan vs. Waseel Gul and another (PLJ 2009 SC 957) wherein it was held as under:-

**“No doubt, it is true that respondent is one of the accused persons charged in a heinous offence but it is equally true that mere heinousness of an offence does not disqualify an accused person from the relief of bail, if otherwise his case is found fit for grant of bail. In the instant case, bail has been granted to respondent for cogent and valid reasons which are not open to legitimate exception.”**

Similar view has also taken in the landmark judgment of the apex court reported as *“Husnain Mustafa v. The State and another”* (2019 SCMR 1914) wherein it has been observed as infra:-

“...Brutality inflicted upon the innocent souls is most appalling to say the least, however, in the chequered circumstances of the case, what cannot be lost sight of is that the complainant, though most grievously aggrieved and devastated, nonetheless, is not eye-witness of the crime; his initial belief that the petitioner in connivance with his former wife murdered the children is essentially structured upon a suspicion; he has even recalled a substantial portion thereof while exonerating identically placed Aneeqa Rasheed before a learned Additional Sessions Judge at Lahore on 19-12-2018. Subsequently inducted co-accused Ayyaz Mehmood, with alleged active participation in the crime is on bail. Polygraph test, a modern forensic method to unearth the truth, may establish a person's capacity to lie, however, findings thereof, cannot be equated with admission of guilt. Transposition of Aneeqa Rasheed as a witness with her failure to prosecute the petitioner through a private complaint constitutes her departure from the scene and as such squarely brings his case within the ambit of subsection (2) of section 497 of the Code of Criminal Procedure, 1898. Statements of Waseem Abbas and Ali Zaib recorded after an unexplained, inordinate delay also require evidential verification during the trial. **Horrors of an heinous crime cannot impede release of accused on bail, if otherwise his guilt called for further probe nor bail can be withheld as a strategy for punishment.**

12. The petitioner is a fragile creature aged about 50 years who is behind the bars since 04.12.2023. The investigation is already completed and she is no more

required by the police for the purpose of investigation. Therefore, further incarceration of the petitioner would not be lucrative to the prosecution. Moreover, 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 as observed in the cases reported as *Muhammad Nawaz alias Karo vs. The State* (2023 SCMR 734) and *Noor Kamal and another vs. The State and another* (2023 SCMR 999).

13. Aftermath of above said discussion is that petitioner has succeeded in making out the case of bail, resultantly, this petition is hereby **accepted** and the petitioner is **allowed** post-arrest bail subject to his furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five hundred thousand only) with two sureties in the like amount to the satisfaction of the learned trial Court.

14. Needless to observe that the observations made hereinabove are only tentative in their nature and would not influence the case of any party at the time of trial.

(Muhammad Tariq Nadeem)  
Judge

**Approved for reporting**

JUDGE