

Criminal Misc.No.8729-B/2014

Zahid

The State etc.

02.05.2014. Ch. Muhammad Anwar Bhinder, Advocate.  
Mr.Iftikhar ul Haq Chaudhary, APG with Iqbal, SI.  
Complainant in person.

The petitioner-Zahid seeks his post arrest bail in case FIR No.673-2013 dated 05.11.2013, under Sections 302, 148, 149 PPC, registered at Police Station, Nosheran Virkan, District, Gujranwala.

2. Briefly stated the prosecution story as narrated in FIR is that petitioner along with co-accused while armed with pistol committed Qatl-e-Amd of Haji Muhammad Ikram and Amir Humza. Hence, this FIR.

3. Arguments heard and record perused.

4. The specific allegation levelled against the petitioner-Zahid in the F.I.R. is that he while armed with a pistol 30-bore formed an unlawful assembly along with 12 nominated and three unknown co-accused and they had resorted to firing at Haji Muhammad Ikram and Amir Hamza (deceased). The allegation levelled against the petitioner is of generalized nature and no specific injury is attributed to him. Although it is alleged in the F.I.R. that the petitioner was armed with a pistol 30-bore but no crime empty of a pistol 30-bore was recovered from the place of occurrence. From place of occurrence seven empties of Kalashnikov, twenty six empties of 222 rifle and one live bullet of 222 rifle were recovered, which make case of the petitioner one of further inquiry. It is held by the Hon'ble Supreme Court of Pakistan in case of "Dilmurad v. The State" (2010 SCMR 1178) that:

*"In our opinion in so far as the issue of common intention is concerned, it is now well settled that at the bail stage the same is normally one of further enquiry unless there are other compelling reasons and circumstances to reach a different conclusion i.e. by way of other pieces of evidence, which could definitely connect the applicant/accused with the crime in question. In the present case, it is quite strange as to why*

*the deceased only received three/four bullet injuries while per the F.I.R. all the accused used their automatic weapons and so also the fact that four empties of 7.62 m.m. rifle were recovered from the spot and none of a Kalashnikov. This indeed casts doubt in the matter, which, at this stage must be resolved in favour of the petitioner. ”*

5. Moreover, the motive as stated in the F.I.R. has been attributed to co-accused namely Arshad, as according to the complainant, few years ago, father and brother of the co-accused-Arshad were murdered by Muhammad Ikram (deceased). On tentative assessment of the record, the possibility of throwing a wide net on the part of the complainant to involve all male members of family can not be ruled out, which makes the case of the petitioner one of further inquiry. Besides, the role of firing has been attributed to all the accused but during investigation, the Investigating Officer declared six co-accused namely Abu Bakkar, Ihsan, Farooq-e-Azam, Waqas, Muhammad Nasir Khan and Muhammad Riaz innocent which also creates doubt regarding manner of occurrence. As such the common object of the accused and fixation of responsibility of fatal shots on the persons of deceased is yet to be determined during the trial after recording evidence of the parties because no crime empty of 30-bore pistol was recovered from the place of occurrence. No doubt, the accused-petitioner is charged for an offence entailing capital punishment but mere heinousness of the offence would not debar the accused from his right of bail, if otherwise, on merits he has made out a case of further inquiry.

6. For the reasons discussed above, instant petition is allowed and petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/-with two sureties each in the like amount to the satisfaction of the learned trial court.

**(Aalia Neelum)**  
**Judge**

**Approved for reporting.**