

47/24

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Jamal Khan Mandokhail  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Syed Hasan Azhar Rizvi

*D.J.-AFR*

**Crl.P.L.A No.1345-L/2023**

[Against the order dated 13.11.2023 passed by the Lahore High Court, Lahore  
in Crl.Misc.No. 33619/B/2023]

***Khizar Hayat***

*...Petitioner(s)*

***Versus***

***The State etc.***

*...Respondent(s)*

For the Petitioner(s)	: Ms. Sabahat Rizvi, ASC alongwith petitioner via <i>video link from Lahore</i>
For the State	: Mr. Irfan Zia, Additional Prosecutor General Punjab Asif Ihsan, S.I/IO, Lahore
For the Complainant	: Syed Rifaqat Hussain Shah, AOR alongwith complainant
Date of Hearing	: 30.05.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through the present petition, the petitioner seeks leave to appeal against the order dated 13.11.2023 (**Impugned Order**) passed by Lahore High Court, Lahore, whereby the pre-arrest bail has been declined to him in FIR No.309/2023 dated 15.01.2023 registered under Section 448, 440, 511, 427, 148, 149, PPC at the Police Station Nishtar Colony, Lahore.

2. Precisely, the allegations against the petitioner as disclosed in FIR are that on 15.01.2023 petitioner alongwith co-accused persons while armed with fire-arm weapons forcibly



entered into the housing society of the complainant and made indiscriminate firing with their respective weapons. Although complainant did not receive any injury however a passerby sustained injuries and some fire shots hit the gate as well as the building of office.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case with mala fide intention and ulterior motives; that father of the petitioner is major partner in the Formanites Housing Society but due to *inter se* relation between the parties, the partial authority to run the society was given to father of the complainant but subsequently they usurp the entire assets; the case of petitioner is one of the further inquiry.

4. The learned law officer assisted by the learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the petitioner and contend that petitioner is specifically nominated in the FIR; that petitioner alongwith other accused persons made indiscriminate firing and removed cash including inside articles as well as CCTV cameras thus he may not be granted extra-ordinary relief of pre-arrest bail.

5. We have heard the learned counsel for the parties and perused the material available on the record.

6. Perusal of record reveals that petitioner's father namely Abdul Ghafoor (late) launched Formanites Housing Scheme, Lahore. Consequently, petitioner's father entered into a partnership deed with his brother and sister in law namely Zahoor Ahmed (father of complainant) and Kausar Parveen (widow of Manzoor Watto) vide a registered partnership deed dated 07.06.2004. Petitioner's father while reposing trust in his brother



Zahoor Ahmed (father of complainant) partially authorized him to run the affairs of society who later on usurped the assets. Thus, parties have family conflicts over the housing society. Hence, possibility of false implication and *malafide* intention cannot be ruled out.

7. Apart from this, it is a case of cross-version. The petitioner in his cross-version has alleged that complainant party was aggressor because petitioner had right to enter into the housing society being the owners of same. In cases of counter versions arising from the same incident, one given by the complainant in the FIR and the other given by the opposite party, bail is granted as a rule on the ground of further inquiry for the reason that the question as to which version is correct to be decided after recording of pro and contra evidence during the trial and also to ascertain which party was the aggressor or was aggressed upon and refusal of bail in such cases is an exception. Reliance is placed on the cases of Fazal Muhammad (1976 SCMR 391), Shafiqan (1972 SCMR 682) and Khalid Mahmood (2013 SCMR 1415).

8. Moreover, in the FIR it is alleged that one passerby namely Zeeshan Haider was injured due to firing of the accused persons however police has conducted no investigation into his injury which also makes the case of petitioner as one of further inquiry.

9. 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.



10. For the above reasons, this petition is converted into an appeal and allowed. The impugned order of the High Court dated 13.11.2023 is set aside. The petitioner is admitted to pre-arrest bail subject to his furnishing surety bonds in the sum of Rs. 100,000/- and PR in the like amount to the satisfaction of the Trial Court.

11. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

12. Above are the reasons of our short order of even date.

**Judge**

**Judge**

**Judge**

Islamabad,  
30<sup>th</sup> May, 2024  
~~NOT APPROVED FOR REPORTING~~  
Paras Zafar, LC\*