

**Yahya Afridi, J.-** There appears to be judicial consensus that the application of principles for the grant or refusal of bail in ‘cross-cases’ depends on the particular facts and circumstances of each case. This proposition can be illustrated by the *ratio decidendi* of the following cases:

- I. To constitute a cross-case, the mere assertion of a counter-case is not enough. Courts are to tentatively assess that the parties, the venue, and the transaction *prima facie* led to the result of a single incident narrated differently by the opposing party. The rationale is that frivolous and false counter-cases, which can exaggeratedly be set up by the opposite party, do not gain an advantage of the general rule and benefits arising out of a counter-case.<sup>1</sup>
- II. In cases of counter versions arising from the same incident, one given by the complainant in the F.I.R., and the other given by the opposite party, bail in appropriate cases is granted as a rule on the grounds of *further inquiry* for the reason that the question as to which version is correct is to be decided after the recording of *pro* and *contra* evidence during the trial, and also to ascertain which party was the aggressor and which party was aggressed upon. The refusal of bail in such cases is an exception.<sup>2</sup>
- III. The exception to the rule of the grant of bail is in cases of counter versions or cross-cases, where *prima facie* the facts of the case suggest that the party seeking bail was an aggressor and/or the material on the record suggests that the said party had an effective role in causing fatal injury.<sup>3</sup>
- IV. In counter versions of opposing parties, without specifying an effective role in causing fatal injury, leaves room for consideration of rendering a case within the purview of

---

<sup>1</sup> Arif Din v. Amil Khan 2005 SCMR 1402; Mushtaq v. Lakhkar Khan 2013 YLR 2046; Liaqat Ali v. State 2013 SCMR 1527.

<sup>2</sup> Fazal Muhammad v. Ali Ahmed 1976 SCMR 391; Shafiqan v. Hashim Ali 1972 SCMR 682; Khalid Mehmood v. Muhammad Kashif Rasool 2013 SCMR 1415.

<sup>3</sup> Nasir Muhammad Wassan v. State 1992 SCMR 501; Rashid Ramzan v. State 2022 SCMR 2011.

further inquiry, as provided under section 497 of Cr.P.C.<sup>4</sup>

V. In cross-cases, wherein one party is granted the concession of bail, similar treatment is also rendered to the other side.<sup>5</sup>

2. In the instant case, distinct versions of how the events unfolded, which lead to the commission of the crime, have been put forth by the contesting parties. The time and place of the occurrence are admitted by both parties. However, the facts of the present case do not *prima facie* put forth which party was an aggressor, as it was a common path close to the dwelling place of both parties, and both were armed with firearms.

3. Admittedly, both parties have recognised the general role of firing firearms at each other, leading to injuries on both sides. In particular, the petitioner has not been reported to having had an effective role in causing injury to any of the two deceased or injured persons.

4. It is also noted that the complainant party in FIR No. 681, who are accused of the general role of firing resulting in injury to five persons belonging to the petitioner's side, have all been granted bail after arrest *vide* orders dated 07.09.2022, 12.10.2022, and 27.10.2022. And thus, denying bail to the petitioner in FIR No. 681, when the two cases *prima facie* are cross-cases, would not be appropriate.

5. It would also be pertinent to note that a counter version put forth by a party which is contrary to the one already rendered by a complainant in an FIR, if it fulfils the essentials of a cross-case as to the time and place of the commission of an offence; would constitute a cross-case, and it cannot be declared to be otherwise solely on the ground that the party claiming its version to be a cross-case did not allege self-defence in the counter version of the events leading to the commission of the offence and recording of the FIR in which he is nominated as an accused.

6. Accordingly, this petition is converted into an appeal, and the same is allowed. Consequently, the petitioner is admitted to bail subject to

---

<sup>4</sup> Jaffar v. State 1980 SCMR 784; Muhammad Aslam v. State 1997 SCMR 251.

<sup>5</sup> Hamza Ali Hamza v. State 2010 SCMR 1219; Muhammad Ashiq v. State 2013 YLR 1133.

furnishing a bail bond in the sum of Rs. 100,000/- (Rupees one hundred thousand only), with two sureties in the like amount to the satisfaction of the trial court.

7. Above are the reasons for respectfully differing from the majority opinion of my learned brothers in the instant case.

Judge

Islamabad

07.03.2023

*Not approved for reporting.*

*Arif*