

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

**Present:**

Justice Naeem Akhtar Afghan  
Justice Shahid Bilal Hassan

**Criminal Petition No.660 of 2024**

(On appeal against the order dated 24.05.2024 of the  
High Court of Balochistan, Quetta passed in CrI. B.  
C.A. No.37 of 2024)

*Abdul Qudoos son of Haji Abdul Razzaq*

***Petitioner***

*Versus*

*Hafiz Israr Ahmed son of Haji Ghulam Nabi and another*

***Respondents***

For the petitioner: Mr. Kamran Murtaza, ASC  
Syed Rifaqat Hussain Shah, AOR  
Petitioner (through video link from Quetta)

For the State: Ms. Robina Butt, ASC  
(As state counsel)  
Mohsin Asad, I.O  
(through video link from Quetta)

Date of hearing: 26.07.2024

**ORDER**

**NAEEM AKHTAR AFGHAN, J.** The petitioner was granted pre-arrest bail u/s 302/34 PPC in FIR No.83/23 lodged with Police Station (**PS**) City Kharan, District Kharan at 7:45 pm on 25 August 2023 by Hafiz Israr Ahmed s/o Haji Ghulam Nabi (**the complainant**) with the statement that in the evening of 25 August 2023 at about 7:00 pm his father Ghulam Nabi was returning home from *bazar* on motorcycle. His two brothers Shadi Khan and Ghulam Umer were also coming behind him on another motorcycle. When they reached village *Siah Putt* near Cadet College, Kharan the petitioner and his brother Abdul Shakoor appeared on their *Vigo* double door pickup and made firing upon his father due to which his father received firearm injuries on his right hand and abdomen. On seeing his brothers, both the accused fled. On receiving information about the occurrence from his brothers, he reached the place of occurrence and took his father to *Sheikh Zayed* Hospital.

2. In pursuance of above FIR, nominated co-accused Abdul Shakoor has not yet been arrested. However the petitioner surrendered before the High Court of Balochistan for grant of pre-arrest bail by filing Criminal Bail Application No. 524/2023 with the contention that on the date and time of occurrence he was not present at the place of occurrence, the statements made by the prosecution witnesses during investigation are contradictory, he has falsely been implicated by the complainant with ulterior motives and on the ground that he is facing threat to his life while approaching the Court of competent jurisdiction at Kharan for grant of pre-arrest bail.

3. The above application of the petitioner was converted into an application for protective bail by the High Court of Balochistan vide order dated 7 November 2023 and the petitioner was directed to approach the Court of competent jurisdiction for grant of pre-arrest bail within ten days.

4. The petitioner surrendered before the Court of Sessions Judge, Kharan for grant of pre-arrest bail by filing Criminal Bail Application No. 132/2023. The petitioner was granted ad-interim pre-arrest bail by Sessions Judge, Kharan vide order dated 17 November 2023 which was confirmed vide order dated 13 January 2024 with the observations that the call Data Record (**CDR**) of the cell phone number of the petitioner and the CCTV footages, filed and relied upon by the petitioner, reveal that on the date and time of the occurrence, the petitioner was present in Satellite Town, Quetta; that the witnesses namely Muhammad Yousaf s/o Ali Bukhsh and Rashid Hussain s/o Muhammad Hussain in their statements on Oath, available on record, have affirmed about the presence of the petitioner at Quetta; in their statements on Oath, available on record, the witnesses Saifullah s/o Ata Muhammad, Muhammad Yaqoob s/o Karim Dad, Muhammad Aslam Barohi s/o Ghulam Rasool and Nasibullah s/o Abdullah have affirmed that on the date and time of occurrence, the deceased Ghulam Nabi was coming from *bazar* in a white color Alto Car, he was stopped in front of the Cadet College by two persons riding on a motorcycle and, after making firing upon Ghulam Nabi, those two motorcycle riders fled; injured Ghulam Nabi went behind them on his vehicle; both the accused went towards Sarawan and Ghulam Nabi went towards his home.

5. While relying upon the dictum laid down by this Court in the case of **"Muhammad Faisal v. The State"**<sup>1</sup> for confirming the pre-arrest bail of the petitioner *vide* order dated 13 January 2024, the 161 Cr.P.C. statement of Ghulam Nabi, recorded by the police on 25 August 2023 in injured condition, was not considered as a dying declaration by the Sessions Judge, Kharan as the death of Ghulam Nabi occurred on the next day i.e. 26 August 2023.

6. Feeling aggrieved of the grant of pre-arrest bail to the petitioner *vide* order dated 13 January 2024 by Sessions Judge, Kharan, the complainant filed Criminal Bail Cancellation Application No.37/2024 before Balochistan High Court which has been accepted by Single Bench of the Balochistan High Court *vide* impugned order dated 24 May 2024 on the grounds that, mere filing of affidavits and CDRs without verification do not make out a case of further inquiry, the co-accused is still absconding, the deceased got recorded his statement to the police on the date of occurrence as injured ascribing role of firing to the petitioner which was corroborated by the ocular as well as medical evidence and that pre-conditions for grant of pre-arrest bail have not been discussed by Sessions Judge, Kharan.

7. None has appeared on behalf of the complainant before this Court despite service. After hearing learned counsel for the petitioner and learned State Counsel, we have perused the available record.

8. The CDR of cell-phone of the petitioner reveals about the presence of the petitioner in different places of Quetta city throughout the day of occurrence i.e. 25 August 2023 as well as on the preceding dates and on the proceeding dates. The CDR of the petitioner as well as the CCTV footages relied upon by the petitioner were provided by the petitioner to the investigating officer for verification but same were not sent by the investigating officer to the concerned department for verification. The witnesses, whose statements on Oath have been relied upon by the petitioner and copies whereof were provided to the investigating officer, have not been examined by the investigating officer to verify the veracity of the same.

9. Record reveals that the petitioner had also submitted an application to the Judicial Magistrate, Kharan for issuing directions to the investigating

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<sup>1</sup> 2020 SCMR 971

officer to take on record the CDR, CCTV footages and affidavits of the witnesses for verification. The said application has been disposed of by Judicial Magistrate-1, Kharan *vide* order dated 21 September 2023 on the basis of the statement made by SI/SHO Nawaz that if the petitioner appears before the investigating officer and presents all the above for inclusion in the case file, the said data/documents would be taken into investigation as per law.

10. Record reveals that the investigation has been completed to the extent of the petitioner and after submission of *Challan*, the trial has also commenced. It further reveals that after tentative assessment of the material available on record, through a well-reasoned and speaking order, the Sessions Judge, Kharan granted pre-arrest bail to the petitioner but same has wrongly been cancelled by Single Bench of the Balochistan High Court *vide* impugned order without appreciating that no grounds for cancellation of pre-arrest bail of the petitioner were available to the complainant. While cancelling the pre-arrest bail of the petitioner, Single Bench of the Balochistan High Court has also failed to appreciate that there was nothing on record to show that the petitioner ever abused or misused the concession of pre-arrest bail.

11. On the basis of tentative assessment of the material available on record, the apprehension of the petitioner for his arrest by the police at the behest of the complainant with malafide and ulterior motives, cannot be held vague or baseless. In the facts and circumstances of the case, the grant of pre-arrest bail to the petitioner by Sessions Judge, Kharan cannot be termed as "*granted in wrong exercise of discretion*".

12. For the above reasons, while granting leave, the Criminal Petition for Leave to Appeal is converted into appeal and while accepting the same, the impugned judgment dated 24 May 2024 passed by Single Bench of Balochistan High Court is set aside. The Order dated 13 January 2024, passed by Sessions Judge, Kharan, confirming ad-interim pre-arrest bail of the petitioner u/s 302/34 PPC in FIR No.83/2013 PS City, Kharan, is upheld.

**Judge**

Islamabad:  
26.07.2024  
(Aliif')  
NOT APPROVED FOR REPORTING

Judge