

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 879 OF 2021**

(On appeal against the order dated 15.07.2021 passed by the Lahore High Court, Multan Bench in CrI. Misc. No. 4853-B/2021)

Muhammad Baqir

... Petitioner

**VERSUS**

The State and another

... Respondents

For the Petitioner:

Mr. Razaqat Islam Awan, ASC  
Ch. Akhtar Ali, AOR

For the Respondent (2):

Mian Muhammad Ismail Thaheem, ASC  
a/w respondent No. 2

For the State:

Mirza Muhammad Usman, DPG

Date of Hearing:

06.12.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks cancellation of bail granted to the respondent Qamar Abbas by the learned Lahore High Court, Multan Bench vide order dated 15.07.2021 in case registered vide FIR No. 146 dated 04.04.2020 under Sections 302 / 109 / 148 / 149 / 452 PPC at Police Station Nawan Shehar, District Khanewal, in the interest of safe administration of criminal justice.

2. As per the contents of the crime report, on the fateful day and time, the respondent along with co-accused while armed with firearms trespassed into the house of the complainant and started firing. The respondent made fire shot with his rifle, which landed on the backside of the right hand of Majid Ali, paternal cousin of the complainant. The co-accused of the respondent also fired on the person of the said Majid Ali, which hit on the left side of his belly and he fell on the ground and succumbed to the injuries.

3. *At the very outset, it has been argued by learned counsel for the petitioner that the respondent was specifically nominated in the promptly lodged crime report with the specific allegation of causing firearm injury on the person of the deceased. Contends that the ocular evidence corroborates with the medical evidence but the learned High Court did not take into consideration this aspect of the matter. Contends that the respondent remained absconder for a period of about one year, which clearly shows that he was fully involved in the commission of the crime. Contends that the respondent is hardened criminal and is involved in so many criminal cases of murder and dacoity etc. Contends that to prevent the complainant from pursuing the case, the respondent had also launched murderous assault on the complainant and in this regard another criminal case has been registered against him and if the bail granted to him by the learned High Court is not cancelled, there is every possibility that he will again try to harm the complainant. Lastly contends that the order passed by the learned High Court being perverse and fanciful, the same may be set aside.*

4. *On the other hand, learned counsel for the respondent has defended the impugned order whereby post-arrest bail was granted to the respondent. He contended that the considerations for grant of bail and cancellation whereof are entirely on different footings and once bail has been granted to an accused on the basis of tentative assessment of evidence available on record then for its cancellation exceptional strong reasons are required. He contended that the alleged injury ascribed to the respondent on the person of the deceased is on non-vital part of the body and could not result in death in the ordinary course of nature, therefore, the learned High Court has rightly granted bail to the respondent.*

5. *We have heard learned counsel for the parties at some length and have perused the available record.*

*There is no denial to this fact that the respondent is nominated in the crime report wherein a specific accusation of causing firearm injury on the backside of right hand of the deceased has been leveled against him. Although the matter was reported to*

the Police after about 4 hours but keeping in view the inter se distance between the place of occurrence and the police station i.e. 18 kilometers and the fact that in such like situations, the people firstly try to save the life of injured, the same would be considered a promptly lodged FIR. Previous enmity between the parties is not denied. The instant occurrence has taken place in broad daylight whereas the parties are known to each other, therefore, there is no chance of mis-identification. The injury ascribed to the respondent is fully supported by medical evidence. We have been informed that after the registration of the present FIR, the respondent had filed application for pre-arrest bail before the learned Trial Court but when he could not get the relief sought for, he approached the learned High Court and ultimately had withdrawn his pre-arrest bail petition on 09.09.2020 but despite that he did not surrender, fled away and remained absconder for a considerable period of time. The perusal of available record shows that the respondent had allegedly launched murderous assault on the complainant on 22.01.2021 for which a separate criminal case bearing FIR No. 41/2021 has been got registered by the complainant party. Otherwise, the mode and manner of occurrence shows that the respondent along with co-accused had trespassed into the house of the complainant with intent to kill the deceased as they started straight firing upon the deceased. Mere the fact that the fire shot made by the respondent hit on the hand of the deceased does not make any difference because the respondent had made a direct fire on the deceased with the intention to kill but it hit on his hand. The postmortem report clearly depicts that both injuries are contributory toward death of deceased. Prima facie, the respondent is vicariously liable for the offence committed and had shared the common intention to take life of the deceased. However, the learned High Court did not take into consideration any of the above-said aspects of the matter, therefore, we are constrained to hold that the reasoning advanced by the learned High Court while granting bail to the respondent is artificial in nature. We are under obligation to attend to the facts and circumstances of the lis brought before us and to evaluate the same in such a manner so that no injustice is likely to be done to either of the party. In the instant case, the

*learned High Court has not given any justiciable reasoning to bring the case of the respondent within the ambit of Section 497(2) Cr.P.C calling for further probe into his guilt. Upon assessment of the available record, we have found that the impugned order does not have any nexus with the guidelines enunciated by the superior courts from time to time with reference to grant of bail. In our opinion, in the instant case the learned High Court while granting bail to the respondent has erred in law and facts and has passed an order which is perverse, fanciful and arbitrary, therefore, the same is not sustainable in the eyes of law. As a consequence, we convert this petition into appeal, allow it, set aside the impugned order and cancel the bail granted to the respondent by the learned High Court vide impugned order dated 15.07.2021.*

JUDGE

JUDGE

Islamabad, the  
6<sup>th</sup> of December, 2021  
Approved For Reporting  
Khurram