

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1067/2020

(Against the order of the Lahore High Court (Multan Bench) dated 07.09.2020 passed in CrI.M No.4698-B/2020)

Khair Muhammad s/o Allah Wasaya and :
another

... **Petitioner(s)**

Versus

The State through PG Punjab and another :

... **Respondent(s)**

For the Petitioner(s) : Mr. Saif Ullah ASC
Syed Rifaqat Hussain Shah, AOR

For the (State) : Mirza Muhammad Usman DPG Punjab
Mr. Omer Saeed, DPO DG Khan
Mr. Saadat Ali, DSP City Circle, DG Khan
Ghulam Akbar SI, PS Gadai, DG Khan

Date of Hearing : 23.10.2020

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ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J: - Criminal petition has been filed for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 calling in question the impugned order dated 07.09.2020 passed by learned Single Bench of Lahore High Court (Multan Bench).

2. The petitioners were booked in case bearing FIR No.488/2020 dated 03.08.2020 offence u/s 302/324/34, PPC registered with Police Station Gadai, District DG Khan.

As per accusation levelled in the crime report, it is alleged that the petitioners were destroying the crops belonging to the complainant, which was forbidden by the complainant, resultantly it emerged into a scuffle, as a consequent, one Khadim Hussain was fired

upon who later succumbed to the injuries, while one Murad Khan also suffered one scratch over his body. The allegation against Khair Muhammad is that he brought two pistols and handed over to his sons whereas “*Danda*” blow is alleged to Bashir Ahmad on the shoulder of the complainant Ahmad Bux besides causing fire shot on the little finger of the complainant.

3. At the very outset, learned counsel appearing on behalf of the petitioners argued that wider net has been thrown by the prosecution to involve whole male members of the family. Further contends that the occurrence has been aggravated and the injury ascribed to Bashir Ahmad is not substantiated by the medical evidence. Contends that the medical report clearly reflects that it was a blunt injury and as such, it negates the version of the prosecution. As far as the role ascribed to Khair Muhammad is concerned, the learned counsel argued that it was opined by the Investigating Officer that he was not present at the spot at the time of occurrence. Contends that the petitioners are of advanced age and have no nexus with the crime alleged against them. Contends that the case of the petitioners is of further inquiry hence, they are entitled for concession sought for.

4. On the other hand, learned law officer argued that the petitioners are nominated in the crime report with specific allegation however frankly conceded that during course of investigation, finding was given by the Investigating Officer that Khair Muhammad was not present at the spot at the time of occurrence whereas firearm injury ascribed to Bashir Ahmad is not observed by the doctor, as alleged by prosecution.

5. We have hearing the learned counsel for the parties and gone through the record.

There is no denial to this fact that the petitioners are nominated in the crime report. According to the contents of the crime report, it is mentioned that the occurrence has taken place in the morning (صبح ويله) whereas the matter was reported to police at 10:50 AM. Admittedly, the inter-se distance between the place of occurrence and police station is 08-KM. Inordinate delay qua time of occurrence and registration clearly reveals that possibility of deliberation and consultation cannot be ruled out. Apart from this, the role ascribed to both the petitioners was not substantiated during course of investigation. Ad-interim bail was granted to the petitioners by this Court vide order dated 01.10.2020 whereas on 08.10.2020 though Investigating Officer was present but he could not satisfy the Court, hence vide order dated 08.10.2020 District Police Officer, DG Khan was directed to appear in person. Today, District Police Officer, DG Khan is present in the Court in person, he categorically stated before the Court that Senior Police Officers of the Gazetted Rank, investigated the matter at length and gave concurrence to the finding given by the local Investigating Officer. The concept of pre-arrest bail is exceptional, it has to be exercised sparingly. The purpose behind is to save innocent persons from false allegations, trumped up charges and malicious prosecution at the end of complainant party. In the salutary judgment of this Court reported as "Meeran Bux Vs, The State and another" (PLD 1989 SC 347), the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon. The petitioners are ascribed the role which was found false during the course of investigation. The injury ascribed to Bashir Ahmad was contradicted by medical evidence. Co-accused Khair Muhammad was found not to be present at the spot at the time of occurrence by the Investigating Officer concurred by Senior Police

Officer. No recovery of any incriminating material is to be affected from the petitioners. Both of them of advance age, feeble and found not connected with the crime as alleged, even one of the petitioners was not present at the spot. The custody of the petitioners would not advance the case of prosecution in any manner. Otherwise the authenticity of the accusation would be resolved by the learned trial court after recording of evidence. We are constrained to give any finding at this stage, lest it may prejudice the case of either of the party.

6. In view of facts and circumstances and keeping in view the sufficient material available on the record, we have persuaded that the case of the petitioners squarely falls within the ambit of section 497(2) Cr.PC entitling the petitioners for the relief sought for. As a consequence, leave to appeal is granted; the same is converted into appeal and is allowed. The ad-interim bail already granted to the petitioners in terms of order dated 01.10.2020 is hereby confirmed subject to their furnishing fresh bail bonds in the sum of Rs.5,00,000/- each to the satisfaction of the learned trial Court/Duty Judge.

JUDGE

JUDGE

Islamabad/23.10.2020
Approved for reporting
Syed Rashid Maqsood