

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 982-L OF 2022**

(On appeal against the order dated 20.04.2022  
passed by the Lahore High Court, Lahore in Crl.  
Misc. No. 20379-B/2022)

Shameem Bibi

... Petitioner

**VERSUS**

The State etc

... Respondents

For the Petitioner: Mian Shah Abbas, ASC  
(Via video link from Lahore)

For the State: Mr. Muhammad Jaffer, Addl. P.G.  
Mr. Bilal Sulehri, ASP  
Mr. Muhammad Yasin, S.I.

For the Respondent (2): Mr. Muhammad Irshad Ch, ASC

Date of Hearing: 22.09.2022

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 20.04.2022 passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant post-arrest bail in case registered vide FIR No. 172 dated 02.02.2022 under Sections 394/302/411/109 PPC at Police Station Mangamandi, Lahore, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as stated in the crime report is that on the fateful day and time, two brothers of the complainant namely Saifullah and Muhammad Nawaz were going towards Sundar Estate on motorbike. They were intercepted by the two unknown persons, who on gun point robbed mobile phones and cash amount from his brothers and thereafter made a fire shot in the head of Saifullah, who

succumbed to the injuries at the spot. They also made a fire shot on the leg of the other brother namely Muhammad Nawaz. Subsequently, on the basis of supplementary statement of the complainant, the petitioner, who was wife of Saifullah, deceased, was implicated in the case. The allegation against her is that the whole occurrence was committed by the accused on her behest and she being in league with him provided him information as she was allegedly having illicit relations with one accused namely Waqas Akram.

3. At the very outset, it has been contended by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that except the bald allegations as contained in the supplementary statement, there is no material to connect the petitioner with the commission of the crime. Contends that the Call Data Record (CDR) is not a conclusive piece of evidence. Contends that during investigation nothing has been recovered from the petitioner. Contends that the petitioner is a woman of advanced age and she cannot be incarcerated without any tangible proof against her.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant has defended the impugned order declining bail to the petitioner. It has been contended that the petitioner has specifically been nominated in the supplementary statement for the commission of the offence, which entails capital punishment. It was lastly contended that according to the CDR, the petitioner was in contact with the alleged dacoit, who is charged with the murder of her husband, therefore, she does not deserve any indulgence by this Court.

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

Admittedly, the petitioner was not named in the crime report and it was subsequent in time that she was implicated in the case on the supplementary statement of the complainant dated 03.02.2022.

The only allegation against the petitioner is that the whole occurrence was committed by the accused on her abetment. However, no specific date, time and place where the conspiracy was hatched has been mentioned in the supplementary statement. Even name and number of witnesses to that extent is not available on the record. Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. **(i)** instigation, **(ii)** engagement with co-accused, and **(iii)** intentional aid qua the act or omission for the purpose of completion of abetment. All the three ingredients of Section 107 PPC are *prima facie* missing in this case. We have specifically asked the learned Law Officer and the learned counsel for the complainant to show us from record any material, which could *prima facie* connect the petitioner with the commission of the crime but except the Call Data Record (CDR), they could not show us anything. This Court in a number of cases has held that in absence of any concrete material the Call Data Record is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused. On our query, learned Law Officer admitted that as yet there is no evidence that the mobile phone belonged to the petitioner and the SIM was in her name. In these circumstances, the (Call Data Record) CDR in isolation does not advance the prosecution's case unless and until some credible material in this regard has been collected. We have been informed that *challan* has already been submitted, which means that the petitioner is no more required for further investigation. The petitioner is a lady of 50 years of age, having five children left at home. This Court has time and again held that liberty of a person is a precious right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be taken away without exceptional foundations. Keeping in view the peculiar facts and circumstances of this case, keeping the petitioner behind the bars for an indefinite period would not be in the interest of justice. In these circumstances, it is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner.

6. For what has been discussed above, the case of the petitioner squarely falls within the purview of Section 497(2) Cr.P.C.

entitling for further inquiry into her guilt. Consequently, we convert this petition into appeal, allow it and set aside the impugned order dated 20.04.2022. The petitioner is admitted to bail subject to her furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of learned Trial Court. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the  
22<sup>nd</sup> of September, 2022  
Approved For Reporting  
**Khurram**