

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 273-L OF 2021**

*(On appeal against the order dated 11.02.2021  
passed by the Lahore High Court, Lahore in Crl.  
Misc. No. 65023-B/2020)*

Major Rehan Zia

... Petitioner

**Versus**

The State and another

...Respondent(s)

For the Petitioner:

Mr. Muhammad Anes Ghazi, ASC a/w  
petitioner in person

For the State:

Mr. Khurram Khan, Addl.P.G. Punjab  
Mr. Nasir, S.I

For the Respondent (2):

Ms. Lubna Afzal, in person

Date of Hearing:

03.01.2022

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** *The petitioner through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, has assailed the order dated 11.02.2021 passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 120/2020 dated 13.03.2020 under Sections 448/380 PPC with Police Station Model Town, Lahore, in the interest of safe administration of criminal justice.*

2. *Precisely the allegation against the petitioner is that in between the night 17/18-08-2019, he had broken up the locks of the room of the complainant; had stolen the luggage belonging to the complainant and thereafter while misusing his official authority occupied the room and extended threats to dire consequences.*

3. *The learned counsel for the petitioner at the very outset has argued that the petitioner has been falsely roped in this case*

*against the actual facts and circumstances due to mala fides of the complainant in connivance with local police. Further contends that the occurrence has taken place in the dark hours on 17/18-08-2019, however, the matter was reported with the delay of seven months for which no plausible explanation has been rendered. Contends that even prior to lodging of the instant application, an application was filed on 30.09.2019, which was found false during the course of interrogation by two senior gazetted officers of the Police. Contends that the allegations against the petitioner are bald, which are not substantiated by any material and even the list of articles allegedly stolen was placed on the record after the registration of the crime report, which is sufficient to discard the whole prosecution case. Contends that the petitioner being an Army officer was posted in operational area of Wanna at the time of alleged occurrence and as such the whole prosecution case is smashed to ground on this score alone. Contends that the very registration of this case is nothing but an abuse of process of law. Lastly contends that the petitioner being an Army officer, there is no chance of his absconsion.*

4. *On the other hand, learned Law Officer contends that the complainant had no malice to falsely involve the petitioner in the present case but admitted that he had expired during the pendency of the case. Further contends that the petitioner is specifically arrayed as an accused, therefore, he does not deserve any leniency by this Court.*

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 instant prosecution was lodged with inordinate delay of about seven months in which the petitioner has sought extraordinary relief from this Court. The perusal of the record clearly reflects that it was at least the second attempt made by the complainant to proceed against the petitioner. In earlier round of litigation, the accusation against the petitioner was found baseless and in this regard a detailed inquiry was carried out by SP Model Town, Lahore. After*

the completion of the inquiry, the Inquiry Officer, a senior police officer was also saddled with the allegation of not conducting the investigation as per law. The same was probed into by SSP (Accountability) and the fate of the allegation against SP Model Town was found to be baseless and without any legal justification. Perusal of the instant petition reveals that there are only bald allegations against the petitioner as time, date and detail of the allegedly stolen articles is not given. Even it is an admitted fact that the petitioner is the sole proprietor of the house and this has been declared by a court of competent jurisdiction after prolonged litigation. It has been brought to the notice of this Court that after the moving of application before the Investigating Officer, the complainant passed away. During the course of proceedings, one lady claiming herself to be sister-in-law of the deceased complainant tried to take charge as complainant. She was in-fact claiming her status on the basis of a power-of-attorney, which does not exist in the eyes of law as the executant of the same has already passed away. As far as criminal law is concerned, the concept of initiation of prosecution lies with the aggrieved person under Section 154 Cr.P.C. and thereafter the same is entrusted to the State whereas under Section 494 Cr.P.C if the proceedings are supposed to be withdrawn, the same is responsibility of the Public Prosecutor. After the promulgation of Qisas and Diyat Ordinance, 1990, the scope of aggrieved person has been extended. However, it was only limited to the cases relating to bodily harm. The instant case only relates to Sections 448/380 PPC, which do not come within the ambit of bodily harm, therefore, the extension of definition of aggrieved person is not available to said lady in the given circumstances. We have also noticed that the petitioner, who is an officer of Pakistan Army has been entangled in this case on the basis of material, which prima facie does not constitute any offence. Even otherwise, he being a member of the services, it seems that there is no chance of his absconsion, which aspect further lends support in his favour as far as the relief sought for is concerned. Unfortunately, the courts below have altogether ignored these aspects, which may intrude the concept of safe administration of criminal justice.

6. In view of the facts and circumstances narrated above and evaluated on the touchstone of criminal justice, we convert this petition into appeal, allow it and set aside the impugned order dated 11.02.2021. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Lahore, the  
3<sup>rd</sup> of January, 2022  
Approved For Reporting  
Khurram