

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

**PRESENT:**

Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.996 of 2020**

*(Against the order dated 11.08.2020 of the  
Lahore High Court Rawalpindi Bench passed  
in Cr. Misc. No.1339-B/2020)*

***Abid Hussain***

*...Petitioner(s)*

**Versus**

***Tassawar Hussain and another***

*...Respondent(s)*

For the Petitioner(s): Syed Hamid Ali Bokhari, ASC

For the Respondent(s): Mr. Haider Mehmood Mirza, ASC  
Mr. M. Sharif Janjua, AOR

For the State: Ch. Sarwar Sindhu,  
Addl. Prosecutor General Punjab with  
Majid I.O.

Date of hearing: 02.02.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Impugned herein is order dated 11.08.2020 by a learned Judge-in-Chamber of the Lahore High Court Rawalpindi Bench Rawalpindi whereby Tasawar Hussain respondent, one of the accused in a case of murderous assault, blamed for a straight effective shot on the abdomen of Husnain Riaz PW confirmed by medical evidence, has been granted bail in anticipation to his arrest. It is alleged that on the eventful day, in the backdrop of a dispute over the possession of a residential house, located within the precincts of Police Station Chontra Rawalpindi, the respondent along with co-accused, eight in number, differently armed with lethal weapons, mounted an assault at 6:30 p.m, in consequence whereof, Husnain Riaz sustained three entry wounds on the frontal part of his body; his wife Ghazala Bibi, Salma Bibi and Abid Hussain also endured injuries.

Avoiding arrest through multiple applications, three in number, the respondent was lastly refused anticipatory bail by a learned

Additional Sessions Judge on 14.7.2020, however, extended protection vide the impugned order, premised upon the following reasons:

*"It is straightaway observed that though the role of causing a firearm injury to injured PW has allegedly been attributed which injury has been declared falling within the mischief of Section 337-D, PPC yet during the course of first investigation, he has been declared innocent by the Investigating Officer. Further, besides the petitioner, four others accused namely Ejaz Hussain, Waseem Ahmad, Saleem Ahmad and Khurram Shahzad were also implicated in the crime report, with role of firing but during the course of investigation petitioner and co-accused Waseem Ahmad have been declared innocent, whereas Saleem Ahmad, having allegation of firearm injury to Mst. Salma Bibi has been admitted to bail vide order dated 13.11.2019, passed in Crl. Misc. No.1867-B of 2019. Other co-accused namely Khurram Shahzad, with the allegation of causing a firearm injury to Abid injured complainant has also been granted bail vide order dated 29.01.2020 and admittedly so far no cancellation of bail petition has been filed by the complainant. More so, confirmatory report regarding all the empties secured from the place of occurrence has been received, according to which, all have been found fired from the pistol allegedly recovered on the pointing out of co-accused. Moreover, importantly close relatives of the petitioner have been implicated in this case and as such possibility cannot be ruled out that the petitioner being one of the elder and real brother of Ejaz Hussain co-accused has falsely been implicated in this case by throwing wider net. In such backdrop, case against the petitioner has become to be one of further inquiry falling within the ambit of Section 497 (2) Cr.P.C. Liberty of a person is precious right guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, which cannot be taken away until and unless there is cogent reasoning."*

2. Heard. Record perused.

3. The impugned view fails to commend approval for reasons more than one; first that it is a journey, inordinately lengthy, into forbidden territories as observations recorded by the learned Judge, in the absence of evidence, yet to be recorded, though presumably tentative, nonetheless, transcend far beyond the barriers of tentative assessment; conclusiveness of the impugned findings, being part of a bail order, though judicial viewed as without any bearing upon the final

outcome of the case, a business to be best settled by the trial Judge, nonetheless, tend to have plunged the prosecution into a situation, embarrassing by all means towards its final destination and, thus, ought to have been avoided. Reference to the protection of freedom guaranteed under the Constitution is equally misplaced as the Constitution pledges freedom to the law abiding citizens; an offender, alleged to have committed some crime, is subject to a different legal regime; he is certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody, his release is regulated by the provisions of the Code of Criminal Procedure, 1898 and he must make out a case within the statutory framework provided thereunder, therefore, a pre-arrest bail cannot be granted as a substitute for post arrest bail. Respondent's previous conduct also escaped notice by the learned Judge; he had been avoiding process of law ever since registration of the case as is evident from the record, before the last dismissal on merits, he twice secured ad-interim bail, each dismissed on account of his failure to appear before the Court on the date fixed. It has been held by this Court in the case of Mukhtar Ahmad Vs. The State & others (2016 SCMR 2064) that such conduct by itself disentitles an applicant to judicial protection. Though there is an oblique reference to a lurking *mala fide*, yet with no substance therein. In a run of the mill criminal case with four injured unanimously clamouring respondent's participation in the occurrence with a half cooked theory of his innocence, subsequently recalled by the police itself, the *mala fide* cannot be readily inferred. Impugned order being inconsistent with the purposes and considerations for extending judicial protection to the innocent, exposed to the horrors of abuse of process of law, for motives oblique and sinister, cannot sustain. Petition is converted into appeal and allowed. Impugned order dated 11.08.2020 is set aside; pre-arrest bail granted to the respondent is cancelled.

**Judge**

**Judge**

Islamabad, the  
2<sup>nd</sup> February, 2021  
Not approved for reporting  
Azmat/-