

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(A.F.R.)

CRIMINAL PETITION NO. 852 OF 2021

(Against the order dated 17.06.2021 of the
Lahore High Court, Rawalpindi Bench,
Rawalpindi passed in Cr.M.No.1127-B/2021)

Chaudhry Nadeem Sultan

...Petitioner(s)

VERSUS

The State through P.G. Punjab and another

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Ramzan Chaudhry, Sr. ASC

For the State: Mr. Abid Majeed, DPG
Mr. Athar Ismail, CPO
Syed Ghazanfar Shah, SSP
Ms. Shazia, DSP
Mr. Sikandar, I.O.
Mr. Mukhtar, Ex-I.O.

For the Complainant: Malik Waheed Anjum, ASC

Date of Hearing: 12.11.2021

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 17.06.2021 passed by the learned Single Judge of the Lahore High Court, Rawalpindi Bench, Rawalpindi, with a prayer to grant post-arrest bail in case registered vide FIR No.385/2021 dated 11.03.2021 under Sections 302/324/449/109/34 PPC at Police Station Saddar Berooni, Rawalpindi in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he along with co-accused while armed with rifle fired on different parts of the deceased whereas the fires made by his co-accused with pistol landed on the chest and belly of the deceased due to previous enmity.

3. At the very outset, it has been argued 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 though the petitioner is ascribed the direct role of causing fire-arm injuries but during the course of investigation he was found innocent and his name was placed in Column No.2 of the report under Section 173 Cr.P.C. Contends that the prosecution has not challenged the opinion of the police and as such it has attained finality. Therefore, the petitioner is entitled to the concession of bail as the case of the petitioner squarely falls under section 497(2) Cr.P.C.

4. On the other hand, the learned Law Officer, assisted by the learned counsel for the complainant, has vehemently argued that though the petitioner has not been challaned by the Investigating Officer, still there is ample material available on the record to connect the petitioner with the alleged accusation. Contends that the plea of alibi taken by the petitioner is artificial and that it can be procured easily. Contends that the affidavits furnished by 18 persons have no value as the same are customary in nature. Lastly, contends that inter-se distance between the place of occurrence and the place where the petitioner claims presence at the time of occurrence is hardly 20 kilometers which can be covered within 10-15 minutes through motorcycle. Hence he is not entitled for the concession of bail.

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

There is no denial to this fact that the occurrence has taken place on 11.03.2021 at 2:20 p.m., whereas the matter was reported to the police at 7:40 p.m. Admittedly there is delay of more than 05 hours in lodging of the FIR for which no explanation has been rendered by the prosecution. Whereas the inter-se distance between the place of occurrence and the Police Station is 06 kilometers. Both these aspects of the case are connected inter-se which requires determination as per dictates of justice especially when there is strong motive alleged by the prosecution. The petitioner is ascribed direct role of causing fire-arm injury to the deceased, however, the petitioner pleaded plea of alibi and during the course of investigation the same was found to be correct and as such the name of the petitioner was placed in column No.2 of the

report submitted under Section 173 Cr.P.C. as no recovery has been affected from the petitioner during the course of investigation. Now the question which requires determination is whether the case of the petitioner is fully covered by the dictum of further inquiry as envisaged under Section 497(2) Cr.P.C. Perusal of the opinion given by the Investigating Officer is based upon the CDR of the cell phone of the petitioner which shows his presence away from the place of occurrence. We had summoned the CPO and the Investigating Officer vide order dated 10.11.2021 for a limited purpose to know whether the opinion given by the Investigating Officer was solely based upon CDR and it can be made basis to declare any person innocent in a case of heinous nature. The CPO, present in Court, has stated that about 100 persons appeared before the Investigating Officer amongst those 18 persons furnished their duly verified affidavits, that at the time of occurrence the petitioner was present in chehlum of a co-villager and even the son of deceased had furnished affidavit in this regard wherein it is specifically stated that at the time of occurrence the petitioner was present over there. The CDR was taken into consideration only to verify the contents of the affidavits and oral statements of the persons who have appeared in defence of the petitioner before the Investigating Officer. We have gone through the law on the subject and found that the definition of an accused person is not provided anywhere in Cr.P.C., rather it was this Court, for the first time in a salutary judgment reported as Brig. (Retd.) F. B. Ali and another Vs. The State (PLD 1975 SC 506) defined the word "accused person". The same is reproduced as under:-

"In my view the mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. Such person may or may not be sent up for trial. The information may be found to be false. An accused is, therefore, a person charged in a trial. The Oxford English Dictionary defines an "accused" as a person "charged with a crime" and an "accusation" as an "indictment". Aiyer in his Manual on Law Terms also gives the same meaning. I am of the view, therefore, that a person becomes an accused only when charged with an offence."

Perusal of the above definition clearly reflects that any person against whom an accusation is made cannot be dubbed as an accused unless and until he is found involved by the Investigating Officer and in this regard a specific order for his arrest is made by him. All these ingredients are missing, therefore, as far as the status of the petitioner is concerned, he cannot be termed as an accused person. However, we have been informed that the report under Section 173 Cr.P.C. has been submitted before the Trial Court and the Court has taken cognizance while summoning accused person which clearly reflects that the summon has been issued for furnishing bail bonds which is in accordance to the procedure laid down under Sections 91/204 Cr.P.C. Therefore, the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. calling for further inquiry into his guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 17.06.2021. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

7. Before parting with the order, we have been informed that co-accused of the petitioner are still at large, therefore, the CPO is directed to adopt all possible measures for bringing the culprits before the law strictly in accordance with law. He is further directed to furnish fortnightly progress reports in this regard for our perusal in Chambers.

Islamabad, the

12th November, 2021

Approved For Reporting

Waqas Naseer/ *