

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

**PRESENT:**

Mr. Justice Maqbool Baqar

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.1269 of 2020**

*(Against the judgment dated 12.10.2020 passed by the Lahore High Court, Multan Bench in Crl. Misc. No.4045-B/2020)*

***Syed Hamad Raza***

*...Petitioner(s)*

**Versus**

***The State & others***

*...Respondent(s)*

For the Petitioner(s):

Mr. Khuram Masaud Kiyani, ASC  
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s):

Mr. Altaf Ibrahim Qureshi, ASC  
Mr. Sanaullah Zahid ASC  
Mr. Anis M. Shahzad, AOR with accused

For the State:

Mirza Abid Majeed, Deputy Prosecutor  
General with M. Ashraf, I.O.

Date of hearing:

16.11.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Aqeel Abbas and Syed Samar Abbas, members of an unlawful assembly, blamed for murderous assault as well as homicide, in the backdrop of a dispute that cropped up soon after a religious congregation, within the precincts of Police Station Harrapa, District Sahiwal on 15.5.2020, an incident wherein three persons lost their lives while four others survived the assault with multiple injuries, were admitted to bail in anticipation to their arrest by a learned Judge-in-Chamber of the Lahore High Court at Multan Bench vide impugned order dated 12.10.2020.

The learned counsel, at the very outset, does not press this petition to the extent of Syed Samar Abbas, saddled with mere presence at the crime scene, however, contends that there was no occasion for grant of judicial protection to Aqeel Abbas, attributed a butt blow to the

petitioner, a role duly confirmed by medico legal examination, conducted same day, under a police docket; it is next argued that investigation confirmed respondent's participation in the occurrence and, thus, his remission into custody for recovery was a most essential step, grievously hampered to the detriment of prosecution by the impugned order; colossal loss of lives with massive violence endured by the witnesses sans space to entertain any hypothesis of *mala fide*, a sine qua non, to extend extraordinary protection of pre-arrest bail, concluded the learned counsel; he has been joined in his opposition by the learned Law Officer. Contrarily, the learned counsel for the respondents argued that the injury shown to have been suffered by the complainant could well be result of a fall, in any case, designated as *Shajjah-i-Khafifa* within the contemplation of section 337 A(i) of the Pakistan Penal Code, 1860, scheduled as bailable and as such the respondent was justifiably granted pre-arrest bail.

2. Heard. Record perused.

3. The respondent prominently figures in the array of assailants in the crime report with a specific role supported by the witnesses in their statements recorded under section 161 of the Code of Criminal Procedure, 1898; medical evidence, *prima facie*, confirmed the role assigned to the respondent and, thus, we failed to find any justification for the High Court to extend judicial protection merely on the ground that "*he was related to the co-accused or that probability of his false implication as a result of wider net and exaggeration being possible factors constituted mala fide intention and ulterior motive*"; such sweeping findings with drastic consequences for the prosecution at the initial stage of the case, that too, structured subjectively on a premise lacking evidential foundations failed to commend our approval. Similarly, we are not impressed by the argument that the respondent could only be saddled with the mischief of section 337 A(i) of the Code *ibid* as the injury allegedly caused by him was medically opined as *Shajjah-i-Khafifa* for the plain reason that role of a participant in a non-bailable offence cannot be quantified to stretch out space for his admission to pre-arrest bail nor can be viewed as a factor to dispense with the requirement of reasonably demonstrating *mala fide* behind the intended arrest; such matters are part of a post arrest bail agenda, not a substitute for pre-arrest bail. For effective and meaningful administration of criminal justice to curb criminal behaviours and with a view to put in place effective deterrence, law must take its course,

unmistakably, arrest in cognizable non-bailable offences, without let or hindrance, for smooth conclusion of investigative process. Petition to the extent of respondent Aqeel Abbas is converted into appeal and allowed; impugned order dated 12.10.2020 to his extent is set aside and bail granted to him is cancelled.

**Judge**

**Judge**

Islamabad, the  
16<sup>th</sup> November, 2021  
Azmat/-