

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 145-L OF 2021

(On appeal against the order dated 20.01.2021 passed by the Lahore High Court, Lahore in CrI. Misc. No. 33500-B/2020)

Dildar Ahmad

... Petitioner

VERSUS

The State etc

... Respondents

For the Petitioner: Mian Muhammad Saeed, ASC a/w
petitioner in person

For the State: Ch. Muhammad Sarwar Sidhu, Addl. P.G.

For the Respondent (2): Mr. mansoor-ur-Rehman, ASC

Date of Hearing: 04.11.2021

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 20.01.2021 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. 336/2020 under Sections 337-F(v)/34 PPC at Police Station Satrah, District Sialkot, in the interest of safe administration of criminal justice.

2. As per the contents of the crime report, on the fateful day and time, the petitioner was digging pits in the state land and mixing them in his own land. When the complainant forbade the petitioner from doing so, the petitioner got infuriated and called his co-accused and upon their arrival he gave 'kassi' blow on the right arm of the complainant, due to which his arm was fractured.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances of this case due

to connivance of the complainant with local police. Contends that in-fact the complainant party was the aggressor and in the incident five injuries were caused to the petitioner, which were suppressed, and as the complainant is a Police constable, the cross-version of the petitioner could not be registered. Contends that the petitioner was also got medically examined and the factum of receiving injuries on his person has been proved. Contends that the injured-complainant was re-examined by a Medical Board, which has found that so far as the injury on his person is concerned, the possibility of fabrication cannot be ruled out. Contends that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. and the challan has already been submitted before the Trial Court, therefore, the petitioner deserves the concession of pre-arrest bail.

4. *On the other hand, learned Law Officer assisted by the learned counsel for the complainant defended the impugned order whereby pre-arrest bail was declined to the petitioner. They contended that the report of the Medical Board dated 05.08.2020 was challenged before the Provincial Standing Medical Board, Lahore, and it was found that there is no possibility of fabrication so far as the injury ascribed to the petitioner is concerned, therefore, the petitioner does not deserve any leniency by this Court.*

5. *We have heard learned counsel for the parties at some length and have perused the record with their assistance.*

As per the contents of the crime report, the allegation leveled against the petitioner is that he caused 'kassi' blow on the right arm of the complainant due to which it got fractured/broken. The complainant was firstly medically examined on 29.06.2020 by a Medical Officer of Rural Health Clinic, Satrah, and then was re-examined by the District Standing Medical Board on 05.08.2020, which clearly opined that considering the nature and locale of injury, the possibility of fabrication cannot be ruled out. Although, the case of the complainant was re-examined by the Provincial Standing Medical Board for the third time but on our specific query, we have been informed that the complainant had not appeared before it for his examination for the third time. It is the case of the petitioner that in-fact the complainant party was the aggressor and during the occurrence, the petitioner has also received as many as five injuries

on different parts of his body, which are detailed in the medico legal report available at page 30 of the paper book. Prima facie the injuries sustained by the petitioner were suppressed. In these circumstances, a prima facie doubt has arisen qua the authenticity of the prosecution's case. It has been held by the superior courts from time to time that benefit of doubt, if established, can be extended even at bail stage. Reliance is placed on Samiullah Vs. Laigzada (2020 SCMR 1115) & Muhammad Faisal Vs. The State (2020 SCMR 971). In these circumstances, it seems more appropriate and justiciable to decide the truthfulness of the accusation by the Trial Court after recording of evidence. The challan has been submitted before the Trial Court and the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Keeping in view all the facts and circumstances, the case of the petitioner squarely falls within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order dated 20.01.2021 and confirm the ad interim pre-arrest bail granted to the petitioner by this Court vide order dated 04.10.2021.

JUDGE

JUDGE

JUDGE

Islamabad, the
4th of November, 2021
Approved For Reporting
Khurram