

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 927-L OF 2021**

*(On appeal against the order dated 22.06.2021 passed by the Lahore High Court, Lahore in Criminal Miscellaneous No. 31992/B/2021)*

Ihtisham Ali Cheema

... Petitioner

**VERSUS**

The State and another

... Respondents

For the Petitioner: Mr. Khurram Latif Khan Khosa, ASC a/w petitioner

For the State: Mirza Muhammad Usman, DPG  
Mr. Muhammad Zahid, SI

Date of Hearing: 21.10.2021

**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 22.06.2021 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. 228/2021 dated 22.02.2021 under Sections 324/337-D/148/149 PPC at Police Station Sadar, Gujranwala, 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 firearms assaulted upon the complainant party and the petitioner fired with his pistol, which landed on the right side of the chest of one Abu Hurera, brother of the complainant.

3. Learned counsel for the petitioner contends 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 the petitioner is innocent and has nothing to do with the alleged offence as narrated in the FIR. Contends that the FIR was registered after a delay of 24 hours which shows that it was registered after deliberation and consultation. Contends that during the Police investigation, the petitioner was found empty handed at the place of occurrence and the role of firing at the chest of the injured was assigned to co-accused Zain, who has been arrested and the pistol has been recovered from his possession. Finally contends that the case of the petitioner falls within the ambit of Section 497(2) Cr.P.C.*

4. *On the other hand, learned Deputy Prosecutor General supported the impugned order declining bail to the petitioner. He contends that the petitioner has been specifically nominated in the crime report with a specific role of firing at the chest of brother of the complainant, 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 record with their assistance.*

*It is an admitted position that the petitioner has assailed the jurisdiction of this Court for the grant of pre-arrest bail, which is extraordinary in nature. The superior courts of this country have repeatedly held that the premium of pre-arrest bail is to be extended sparingly. However, if the facts and circumstances do warrant that the person seeking such relief is falsely implicated and there is likelihood of being injustice committed to him, this Court is under obligation to come for the rescue of innocent person while granting the said extraordinary relief. In the instant case, there is no denial to this fact that the case was registered after lapse of 24 hours whereas the distance between the place of occurrence and the Police Station is hardly four miles on a metal road. The inordinate delay per se in this particular case is to be evaluated with care and caution. No doubt the petitioner is assigned the role of causing firearm injury on the right side of chest of the brother of the complainant but this aspect has been found false during the course of investigation, which remained unchallenged. During the course of investigation, it was further found that in-fact it was co-accused of the petitioner who fired at the injured and as such he was taken into*

*custody and pistol has been recovered from him. During the course of investigation, it was further found that though the petitioner was present at the place of occurrence but he was empty handed and no overt act is ascribed to him. Apart from this it is an admitted fact that the petitioner was taken to hospital after the lapse of three hours and still fresh blood was oozing from the wound whereas the Glasgow Conscious Scale (GCS) was found to be 15/15. All these aspects when taken into consideration conjointly create doubt in the genuineness of the prosecution case. It is established principle of law that the benefit of doubt can even be extended at bail stage. It is an admitted fact that the parties are resident of the same area, known to each other and the occurrence has taken place in the broad day light. As a consequence of all facts and circumstances, we are of the view that putting the petitioner behind the bars at this stage perhaps would result into undue incarceration prior to establishing the guilt of the petitioner, which is to be avoided because of the reason that the liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.*

6. *For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order dated 22.06.2021 and confirm the ad interim pre-arrest bail granted to the petitioner by this Court vide order dated 22.09.2021.*

JUDGE

JUDGE

Islamabad, the  
21<sup>st</sup> of October, 2021  
Approved For Reporting  
Khurram