

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 103-P OF 2022**

(On appeal against the order dated 29.04.2022 passed by the Peshawar High Court, Peshawar in Cr.MBA No. 1033-P/2022)

**Abdul Wahid**

... Petitioner

**Versus**

## The State and another

... Respondent (s)

For the Petitioner(s): **Mr. Abdul Fayyaz, ASC**  
***(via video link from Peshawar)***

For the State: Ms. Aisha Tasneem, State counsel  
Mr. Mukhtiar Khan, Inspector

For Respondent No.2: Mr. Hussain Ali, ASC  
(via video link from Peshawar)

**Date of Hearing:** 27.07.2022

## 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 29.04.2022 passed by the learned Single Judge of the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case registered vide FIR No. 1330 dated 23.10.2021 under Sections 302/324/109 PPC at Police Station Sarband, District Peshawar, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as alleged in the crime report is that the complainant along with his two brothers Ikram and Asad was sitting in his place of work when suddenly one unknown person while armed with pistol came there and opened fire on them, which landed on different parts of

their bodies. Due to the fire shots, the brother of the complainant Ikram died in hospital whereas the complainant and his other brother namely Asad sustained several injuries. On 22.11.2021, the petitioner was nominated as accused by the complainant through his supplementary statement recorded under Section 164 Cr.P.C. After his arrest, the petitioner approached the learned Trial Court as well as the High Court for post-arrest bail but his bail petitions stood dismissed. Hence, this petition seeking post-arrest bail.

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. Contends that the petitioner was not named in the FIR and he was belatedly nominated by the complainant through supplementary statement but no source of information was disclosed. Contends that the description of the assailant has also not been given in the crime report. Contends that no recovery has been affected from the petitioner. Contends that the six crime empties collected from the place of occurrence were found fired from different weapons. Contends that the so-called interview of the petitioner given to a TV channel has no evidentiary value in the eyes of law. Lastly contends that the petitioner being innocent deserves to be released on bail in the interest of justice.

4. Learned State counsel very frankly did not oppose the contentions raised by the learned counsel for the petitioners, rather supported the same.

5. On the other hand, learned counsel for the complainant vehemently defended the impugned order. He contended that the petitioner has specifically been nominated by the complainant through his supplementary statement. Contends that the complainant has no previous enmity with the petitioner to falsely involve him in the case. Contends that the petitioner himself made a statement of his guilt in a TV interview given in the jail premises, which is a solid piece of evidence, therefore, he does not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

There is no denial to this fact that the petitioner was not nominated in the crime report. Even the complainant while lodging the FIR had not given the description of the assailant regarding his body structure, age, height and other antecedents etc. However, after the lapse of about one month, the complainant preferred to make statement under Section 164 Cr.P.C. wherein the petitioner was cited as the assailant. However, we are of the view that veracity of statement of complainant under Section 164 Cr.P.C requires legal analysis on the ground (i) it is delayed by one month, (ii) no source of information has been disclosed, (iii) no tangible material has been collected during the course of investigation, & (iv) recovery of empties of different bore brings the case within the ambit of further probe. It has been frankly admitted by the learned state counsel that no recovery has been affected from the petitioner rather the six empties collected from the place of occurrence were found fired from different weapons, which reflects that the occurrence has been committed by more than one person. So far as the interview of the petitioner wherein he allegedly confessed his guilt is concerned, the same *prima facie* has no evidentiary value as neither the maker of the video has been cited as a witness in the calendar of witnesses nor the forensic test of the said video has been conducted. This Court in the case of Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) has candidly held that such kind of alleged confessionary video is not beneficial to the concerned party unless it is properly produced before the court of law, its genuineness is established and then the same is proved in accordance with law for it to be treated as evidence in the case. The Court further held that with the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained as to whether an audio tape or a video is genuine or not and as such examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not because advancement of science and technology has also made it very convenient and easy to edit, doctor, superimpose or photoshop a voice or picture in an audio tape or video, therefore, without a forensic examination, audit or test, it is becoming more and more unsafe to rely upon the same as a piece of evidence in a court of law. However, we do not want to comment further on this aspect

of the matter as it may prejudice the case of either of the parties during trial. It has been informed by the State counsel that statements of two prosecution witnesses have been recorded. On our specific query, learned counsel for the complainant admitted that the witnesses whose statements have been recorded are formal witnesses and as such the bulk of the evidence is still to be recorded by the Trial Court. The petitioner is behind the bars for the last more than eight months. This Court has time and again held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be curtailed on trump up charges unless the same is proved to the hilt by the court of competent jurisdiction. Keeping in view the peculiar facts and circumstances of the present case, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period till the conclusion of the trial. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 29.04.2022. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

Islamabad, the  
27<sup>th</sup> of July, 2022  
Approved For Reporting  
Khurram