

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

**Present:**

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Muhammad Ali Mazhar

**Criminal Petition No.952/2021**

(Against the order of Lahore High Court, Multan Bench  
dated 12.7.2021 passed in Cr. Misc No.2824-B/2021)

Muhammad Ramzan

*.....Petitioner(s)*

***Versus***

The State, etc

*.....Respondent(s)*

For the petitioner(s): Mr. James Joseph, ASC.

For the State: Ch. Muhammad Sarwar Sandhu, Addl.PG  
Mr. Farhat, SHO.  
M/s Jalil & Ghulam Yasin, I.Os.

Date of hearing: 08.10.2021

**ORDER**

**Syed Mansoor Ali Shah, J.-** Petitioner seeks leave against the order dated 12.7.2021, wherein post arrest bail in case FIR No.325/2020, under sections 302, 148 and 149, PPC, PS Shah Jamal, district Muzaffargarh, was denied to the petitioner by the High Court.

2. We have heard the learned counsel for the petitioner, as well as, the learned Additional Prosecutor General and the Investigating Officer (IO). It has been categorically stated before us by the IO that on the basis of the statements of eight independent witnesses recorded by him, the petitioner, even though present at the site of the occurrence, was neither involved in the commission of the offence nor was he carrying any weapon. At this juncture, learned Additional Prosecutor General vehemently pointed out that the statement of witnesses referred to by the IO have been recorded in the case diary (*zimni*) prepared under section 172 of the Cr.P.C and do not constitute statement of a witness under section 161, Cr.P.C.

3. Under section 161(3) Cr.P.C. the Police officer is to reduce in writing any statement made to him in the course of examination of any person supposed to be acquainted with the facts and circumstances of the case. The Police Officer is to make a

separate record of the statement of each such person but in case the statement of such a person, recorded by the IO, is embodied in the case diary instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C. The distinction between sections 161 and 172, Cr.P.C is that while one deals with the recording of the statement of witnesses / persons acquainted with the facts and circumstances of the case, the other is the information or opinion of the IO which he gathers and forms during the course of the investigation. So if while recording his opinion in the case diary, the IO also records the statement of a witness, any such statement continues to pass for a statement under section 161 Cr.P.C. and does not become a part of the case diary under section 172 Cr.P.C.<sup>1</sup>

4. We have also noticed that two of the co-accused namely Mukhtiar Hussain and Ghulam Murtaza had a specific role in the crime report but were granted bail<sup>2</sup> by the High Court on similar statement of the Police that they while present at the site of occurrence were not involved in the commission of the offence and were not armed with any weapon.

5. In view of the statement of the investigation officer supported by the statement of the witnesses discussed above, we are of the view that there are sufficient grounds for further inquiry into the guilt of the petitioner. The petitioner (Muhammed Ramzan) is, therefore, admitted to post-arrest bail, subject to furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial Court. This petition is converted into appeal and allowed accordingly.

Judge

Islamabad,  
08<sup>th</sup> October, 2021.  
Approved for reporting  
*Sadaqat*

Judge

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<sup>1</sup> See: Zulfikar Ali Bhutto v. State, PLD 1979 SC 53; Nasrullah v. State, 1980 P.Cr.L.J 5; Muhammad Akbar v. State, 1985 P.Cr.L.J 338; Muhammad Tahir v. State, 1986 P.Cr.L.J 3025; Khalid Pervez v. The State, 1989 P.Cr.L.J 1824; Nazar Muhammad v. Mushtaq Ahmad, PLD 1996 Lahore 277; Muhammad Riaz v. State, and PLD 2003 Lahore 290.

<sup>2</sup> Vide order dated 27.01.2021 in Mukhtiar Hussain vs. State, etc – CrI.Misc 7627-B/2020 and vide order dated 29.03.2021 in Ghulam Murtaza vs. State, etc – CrI.Misc 659-B/2021.