

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.560-L OF 2021

(Against the order dated 04.03.2021 of the
Lahore High Court, Lahore passed in Crl. Misc.
No.11025/B/2021)

Basharat Ali

...Petitioner(s)

Versus

The State through Prosecutor General, Punjab and another

...Respondent(s)

For the Petitioner(s): Dr. Khalid Ranjha, ASC

For the State: Mr. Muhammad Jaffar, DPG
Mr. Sibtain, I.O.

For Respondent No.2: Mr. Tariq Nadeem, ASC

Date of Hearing: 15.11.2021

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 04.03.2021 passed by the learned Single Judge of the Lahore High Court, Lahore with a prayer to grant post arrest bail in case registered vide FIR No. 415 dated 31.10.2019 under Sections 302/324/34/109 PPC at Police Station Miana Gondal, District Mandi Bahauddin 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 Kalashnikovs caused fire-arm injuries to Muhammad Anar and Mazhar Iqbal alias Mohri as a consequence of which Muhammad Anar died on his way to hospital.

3. *At the very outset it has been contended by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Further contends that though the petitioner was ascribed the role of causing injury to the deceased and injured PW, however during the course of second investigation it was found that the petitioner had no nexus with the crime alleged and even the recovery affected from the petitioner found to be not connected and as such the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling him for concession of bail.*

4. *On the other hand, it has been contended by the learned Law Officer, assisted by the learned counsel for the complainant, that the petitioner is nominated with specific role of causing injuries to the deceased as well as injured PW. Contends that the earlier bail petition bearing Criminal Misc. No.22590-B/2020 was dismissed while touching upon the merits of the case vide order dated 01.07.2020. Further contends that as said order was not assailed before this Court, therefore, the instant petition is barred by time and not entertainable in the given facts and circumstances.*

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

There is no denial to this fact that the occurrence has taken place within the premises of Police Station Miana Gondal, the parties also belong to the same vicinity and there is no chance of mis-identification especially when the parties are inimical to each other. As per the accusation against the petitioner, he is ascribed the role of causing fire-arm injury on the body of the deceased as well as injured PW. Both the injuries are spelt out from the medical report. During the course of first investigation, the petitioner was found fully involved in the case. The claim of the petitioner that during the second investigation, he was found innocent does not imprint any concession in his favour especially when this aspect was already taken into consideration by the High Court while dismissing the petition for bail in the first round of litigation. Further that the Investigating Officer who gave opinion in favour of the

petitioner has not dared to place his name in column No.2, rather the same was placed in column No.3 of the report submitted under Section 173 Cr.P.C. Further that the ground urged before the High Court and before us was already in the knowledge of the petitioner and that cannot be made basis for filing another application before the High Court keeping in view the dictum laid down in The State through Advocate-General, NWFP Vs. Zubair and 4 others (PLD 1986 SC 173), otherwise the ipsi dixit of the police is not binding, rather it has persuasive value but that depends upon the facts and circumstances surfaced on the record. It is salutary principle of law that each criminal case has its own facts and circumstances and has to be decided according to the peculiar facts brought on the record. The contention of the learned counsel that the recovery has become inconsequential has no bearing at this stage and the same would be resolved after recording of the evidence.

6. *In view of the facts and circumstances narrated above, we are of the opinion that the petitioner has failed to make out a case for enlargement on bail. Consequently, this petition having no merits is dismissed and leave is refused.*

JUDGE

JUDGE

JUDGE

Lahore, the
15th of November, 2021
Approved for reporting
Waqas Naseer/*