

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 507-L OF 2021

(On appeal against the order dated 02.04.2021 passed by the Lahore High Court, Lahore in Criminal Miscellaneous Application No. 15372-B/2021)

Kazim Ali and others

... Petitioners

VERSUS

The State etc

... Respondents

For the Petitioners: Rana Muhammad Shahid Mahmood, ASC
a/w petitioners

For the State: Mr. Muhammad Jaffer, Addl. P.g.
Mr. Tahir Bashir, SI

Date of Hearing: 11.10.2021

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 petitioners have assailed the order dated 02.04.2021 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. 285 dated 25.07.2020 under Sections 337-F(v) / 337-F(i) / 337-F(ii) / 337-A(i) / 337-H(2) / 354 / 452 / 427 / 148 / 149 PPC at Police Station Sher Garh, District Okara in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioners is that they along with co-accused while armed with firearms and 'sotas' firstly attacked on the complainant party and injured cousin of the complainant and thereafter trespassed into the houses of relatives of the complainant, gave beating to the women folk and children and also set on fire two motorcycles.

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

Contends that the story advanced by the complainant does not inspire confidence as a large number of persons while committing the offence in the manner as disclosed by the prosecution witnesses, their role cannot be specified with exactitude as is narrated in the crime report. Contends that 4 out of 17 accused were arrested by the Police and they have been granted post-arrest bail by the court of first instance. Contends that the role of the petitioners is similar to the co-accused already granted bail, hence, they are also entitled for the concession of bail on the principle of consistency. Contends that the learned High Court while adjudicating the matter has wrongly observed that Sections 354/427/452/148/149 PPC are attracted in this case and did not take into consideration the role ascribed to each of the petitioners. Contends that most of the offences are bailable in nature and cannot be made basis for declining bail to the petitioners without recording the evidence during the course of trial. Lastly contends that the petitioners are entitled for the concession of bail on this score alone.

4. *On the other hand, learned Law Officer argued that there is no denial to this fact that co-accused of the petitioners four in number have been granted post-arrest bail and as such the case of the petitioners is similar to those already extended concession of bail.*

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

There is no denial to the fact that there is a delay of four days in lodging the FIR for which no plausible explanation has been given. As per the contents of the crime report, 17 persons are nominated in the crime report, who allegedly while variously armed caused injuries to the injured PWs on various parts of the body. There is a counter version of the occurrence which was recorded by the local police regarding the same occurrence vide FIR No. 310/2020 under Sections 379 / 354 / 427 / 337-A(i) / 337-L(ii) / 148 / 149 PPC at Police Station Sher Garh, District Okara. While evaluating the facts and circumstances narrated from both ends, it has become imperative for this Court to adjudicate the matter keeping in view the role ascribed to accused nominated in counter case and while keeping the same in juxtaposition it has to arrive at

a conclusion which meets the requirements of the dictates of justice. During course of arguments, it has been pointed out that four co-accused of the petitioners were taken into custody by the local police and they have been granted post-arrest bail by the court of competent jurisdiction, which has not been challenged by the complainant at any forum. We are conversant with the fact that as per the contents of the crime report, the case of either of the petitioners cannot be distinguished from the four co-accused who have been granted the concession of post-arrest bail. In such like situation, when it is admitted fact that the role ascribed to a large number of accused is of general nature and that cannot be distinguished from each other, if 4 out of 17 accused have already been granted bail by the court of competent jurisdiction which remains unchallenged by the complainant, any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioners because of the reason that soon after their arrest they would be entitled for the concession of post-arrest bail on the plea of consistency. In a similar situation in the case reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), the respondent, who was involved in a murder case, was allowed pre-arrest bail by the learned High Court while the other similarly placed co-accused were granted bail after arrest. The complainant did not challenge the grant of bail after arrest to the similarly placed co-accused and sought cancellation of pre-arrest bail granted to the respondent before this Court by filing a criminal petition but this Court dismissed the petition for cancellation of bail by holding that "no useful purpose would be served if the bail of Zafar Ullah Khan respondent is cancelled on any technical ground because after arrest he would again be allowed bail on the ground that similarly placed other accused are already on bail." In these circumstances, it is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner. Prima facie there are sufficient grounds to take into consideration that the case of the petitioners is fully covered by Section 497(2) Cr.P.C. calling for further inquiry to their guilt.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 02.04.2021 passed by the learned Single Judge of the High Court. The petitioners are admitted to pre-arrest bail subject to their furnishing bail bonds in the sum of Rs.100,000/- each with two sureties each in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Lahore, the
11th of October, 2021
Approved For Reporting
Khurram