

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

**PRESENT:**

Mr. Justice Maqbool Baqar

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.275 of 2021**

*(Against the judgment dated 22.02.2021 passed by the Lahore High Court, Multan Bench in Crl. Misc. No.1185-CB/2021)*

***Muhammad Ismail***

*...Petitioner(s)*

**Versus**

***The State & others***

*...Respondent(s)*

For the Petitioner(s): Mr. Ejaz Ahmed Toor, ASC

For the Respondent(s): Mr. Muhammad Bilal Butt, ASC along with accused

For the State: Mirza Abid Majeed, Deputy Prosecutor General with Hammad, DSP and M. Hanif, I.O.

Date of hearing: 17.11.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Having left home the preceding night, Muhammad Waseem, 24/25, was spotted dead with multiple gun wounds within the precincts of Police Station Saddar Multan at 8:40 a.m. on 26.10.2019; crime report lodged by his father Muhammad Ismail sans the names of culprits as well as motive, suspected for the crime, however, through a supplementary statement he nominated besides the respondents Muhammad Attique Khan, Muhammad Ismail and Muhammad Zain-ul-Abideen as the suspects. Deceased's carnal designs on Muhammad Attique's son Haris are alleged to have cost him his life. As the investigation progressed, the Investigation Officer recorded statements of as many as four witnesses, pointing their fingers upon the respondents as well as Muhammad Attique; latter assigned the fatal shots. The respondents, statedly, made separate confessions before the witnesses wherein they admitted, not only to have conspired the crime with the principal accused but also flanked him during his fatal encounter with the deceased. A learned Additional Sessions Judge at Multan, however, admitted both the respondents to anticipatory bail vide order dated 10.12.2020, upheld by

a learned Judge-in-Chamber vide impugned order dated 22.2.2021, being assailed on the grounds that in the face of overwhelming evidence, unambiguously pointed upon the culpability of the respondents being comrades in the crime, there was no occasion for the learned Addl. Sessions Judge to extend them judicial protection merely for the reason that some other co-accused were granted post arrest bail by the High Court; the bottom line is that protection of pre-arrest bail is an entirely different regime, governed by considerations hardly applicable at post arrest stage; he has been joined in his opposition by the learned Law Officer.

Learned counsel for the respondents, contrarily, defended the impugned order on the grounds that the respondents were not named in the crime report and their implication on the basis of a belatedly recorded supplementary statement is structured on a misplaced and misconceived suspicion; it is next argued that the respondents had no earthly reason to tread on red coals particularly when there existed no incriminatory evidence that could even obliquely connect them with the crime and as such the entire edifice appears to have been raised on foundations tainted with *mala fide* on the basis of statements, stage-managed subsequent to the incident and, thus, judicial protection extended to them is an arrangement, most conscionable in circumstances.

2. Heard. Record perused.

3. What weighed with the learned Additional Sessions Judge to grant extraordinary relief of pre-arrest bail to the respondents are certain observations by a learned Judge-in-Chamber of the Lahore High Court Multan Bench whereby two from amongst the accused were released on post arrest bail and it is in this backdrop he seemingly opted to suspend the usual course of law by invoking principle of requirement of consistency. It goes without saying that an accused of a cognizable offence scheduled as non-bailable can only claim protection of anticipatory bail by reasonably demonstrating his intended arrest being contemplated by considerations *mala fide* and sinister, designed to abuse process of law. It is a judicial protection rooted into equity; whereas an accused in custody after completion of investigation can be released on bail on the touchstone of consideration statutorily enumerated in subsection 2 of section 497 of the Code of Criminal Procedure, 1898, these two have no parallels.

For effective administration of criminal justice, it is most important that prosecution is allowed a meaningful opportunity to carry

out and conclude the investigative process as apart from readily available evidence in the aftermaths of an incident it may lay hands upon incriminatory material that may possibly become available pursuant to disclosures in custody; this has been grievously ignored. Similarly, an anticipated failure of prosecution, no matter how loudly clamoured, cannot be received to set its case at naught even before it is taken off. Failure by the learned Additional Sessions Judge as well as learned Judge-in-Chamber of the Lahore High Court to give due weight to the statements of the witnesses and misconceived invocation of principle of consistency fails to commend our approval. It has been held in the case of Mst. Qudrat Bibi (2003 SCMR 68) ".....we are of the opinion that at a stage of admitting to an accused on the bail the Court should not stamp the prosecution witnesses who have recorded their statements promptly to be false witnesses....". Similarly, pre-arrest bail is not to be used as a substitute or as an alternative for post arrest bail. See Rana Muhammad Arshad Vs. Muhammad Rafique and another (PLD 2009 S.C. 427).

Admission to pre-arrest bail is a huge concession to an accused, required to be arrested in a cognizable offence as it exempts him from remission into custody, irreversibly foreclosing avenues for the prosecution to possibly secure further evidence, consequent upon disclosures, therefore, such a relief must only be extended in the face of considerations proportionately compelling; these are conspicuously lacking; it is most imperative to keep the scales in balance. Petition is converted into appeal and allowed. Consequently, order dated 10.12.2020 passed by the Additional Sessions Judge Multan and upheld by a learned Judge-in-Chamber of the Lahore High Court at Multan Bench on 22.02.2021 are set aside; pre-arrest bail granted to the respondents is cancelled.

**Judge**

**Judge**

Islamabad, the  
17<sup>th</sup> November, 2021  
Azmat/-