

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 537 OF 2021

(On appeal against the order dated 07.05.2021 passed by the Lahore High Court, Multan Bench in CrI. Misc. No. 2846-B/2021)

Sajid Hussain @ Joji

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner: Kh. Qaiser Butt, ASC a/w petitioner

*For the State: Mirza Abid Majeed, DPG
Mr. Jam Saleem, DSP*

Date of Hearing: 06.09.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- *Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks pre-arrest bail in case registered vide FIR No. 678/2019 under Section 302 PPC at Police Station Old Kotwali, Multan. The same relief was denied to him by the learned Trial Court vide order dated 21.04.2021 and was also declined by the learned High Court vide impugned order dated 07.05.2021.*

2. Briefly stated the facts of the matter are that on 24.11.2019, the complainant and the petitioner went to see Malik Amir Sultan at his house. At about 01.00 am, one Haroon while armed with pistol came at the residence of the said Amir Sultan and made two fire shots with his pistol, one of which landed on the right thigh of the said Amir Sultan. The said Amir Sultan was evacuated for medical treatment in injured condition but he succumbed to the injuries on his way to hospital. Initially, the petitioner was cited as a prosecution witness in the FIR but subsequently on the statement of Mst. Masooma Bibi, real sister of the deceased, he was arrayed as an accused in the case.

3. *At the very outset, learned counsel for the petitioner argued that the petitioner has been falsely involved in this case due to mala fides of the complainant in connivance with the local police; that primarily the petitioner was cited as a prosecution witness in the crime report and his statement under Section 161 Cr.P.C was recorded by the Investigating Officer in this regard; that the prosecution has taken a somersault after lapse of considerable time while introducing Mst. Masooma Bibi, who got recorded her statement under Section 161 Cr.P.C. wherein she leveled the allegations of causing two successive fire shots on the person of the deceased to the petitioner; that the delayed statement of the prosecution witnesses introduced at a belated stage leaves sufficient room to extend the relief sought for; that the whole prosecution case is based upon bald statements of the two prosecution witnesses, which prima facie seem to be made after due deliberation and consultation, hence, the same do not strengthen the prosecution case in any manner.*

4. *On the other hand, learned Deputy Prosecutor General has defended the impugned order declining bail to the petitioner. He mainly submitted that the petitioner was specifically nominated by Mst. Masooma Bibi with a specific role of causing successive fire shots at the person of the deceased; that she is a natural witness and has no malice against the petitioner to falsely involve him in the case.*

5. *We have heard the arguments of both sides and have perused the record with their assistance.*

We are conscious of the fact that the petitioner has assailed the instant petition seeking extraordinary relief of pre-arrest bail from this Court in a murder case, which entails capital punishment. The superior courts of the country are hesitant to extend the said relief in such like cases and the same is exercised with due care and caution sparingly. However, this Court being the ultimate court of justice is supposed to do complete justice in the interest of safe administration of criminal justice and whenever it feels that the case of the prosecution is based upon trump up charges or mala fides it comes for the rescue of the innocent persons. Even otherwise, a duty is cast upon the courts of law to provide protection of law to the innocent persons against whom frivolous litigation has been lodged. In the instant case, this Court cannot lose sight of the fact that the petitioner was cited as a prosecution witness while lodging the crime

report with a role of facilitating the evacuation of the deceased to the hospital by calling Police Emergency Helpline '15' and Rescue 1122. Apart from this, it is also admitted fact that the prosecution kept mum for almost one year and it was on 22.10.2020 that one Mst. Masooma Bibi was introduced by the prosecution who made a statement under Section 161 Cr.P.C. claiming herself to be an eyewitness of the occurrence and leveled the allegation of causing two successive fire shots on the person of the deceased to the petitioner. The statement of Mst. Masooma Bibi was further supplemented by another eyewitness. However, the same was recorded with an inordinate delay of 1 year and 4 months. During the course of proceedings before us, we have specifically inquired from the Investigating Officer about any progress made in the investigation qua the role of the petitioner but he failed to substantiate any incriminating material except the bald statements made by two prosecution witnesses at a belated stage. Delayed recording of statement of prosecution witnesses and its value has been enunciated by now as universal application where it is now established principle of law that any statement of the prosecution witnesses if recorded at a belated stage, it loses its sanctity. Reliance is placed on the judgment reported as Abdul Khaliq Vs. The State (1996 SCMR 1553). This judgment was followed by this Court in another judgment reported as Noor Muhammad Vs. The State (2020 SCMR 1049) wherein it was held as under:-

"It is established principle of law that delayed recording of statement of the PW under section 161, Cr.P.C. reduces its value to nil. Reliance in this regard is placed upon case titled as "Abdul Khaliq v. The State" (1996 SCMR 1553) wherein it has been held as under:-

"---S. 161---Penal Code (XLV of 1860), S. 302/34---Late recording of statement under S. 161, Cr.P.C.---Value---Late recording of a statement of a prosecution witness under S. 161, Cr.P.C. reduces its value to nil unless delay is plausibly explained".

6. We are also conscious of the fact that earlier the scope of pre-arrest bail was narrow and it was only limited to rare cases. However, the law is not static in any manner rather it has to grow while passing through the process of evolution which is an essential ingredient of safe administration of criminal justice. In the case of Miran Bux Vs. the State (PLD 1989 SC 347), the petitioner/accused was charged in a murder case but before he could be arrested, he

approached the learned Sessions Judge for grant of pre-arrest bail, which was accordingly granted to him. However, on the application of the complainant before the learned High Court seeking cancellation of bail granted to the petitioner Miran Bux, the learned High Court cancelled the pre-arrest bail granted to him. Being aggrieved by the order of the learned High Court, the petitioner in that case approached this Court and this Court restored the bail granted to him by the learned Sessions Judge by holding as under:-

4. Apart from this we find that the Sessions Judge granted the pre-arrest bail to the appellant after considering the merits of the, case inasmuch as he inter alia observed that the injury alleged to have been caused by the appellant to the leg of the deceased by gun. shot was according to the post-mortem note, neither fatal nor was caused on the vital part of the body and was declared to be simple and that it was a case of further inquiry so far as the appellant is concerned. The High Court did not at all, consider the case on merits though this Court in the case of Jamaluddin v. State 1985, SCMR1949 has observed at page 1952 of the report as follows:

"it has been laid down by this Court that the grant or refusal of bail in criminal cases primarily depends upon the facts of each case and no hard and fast rules can be laid down in this regard. In Murad Khan's case to which reference was made by the learned Judge, this Court reiterated the principle that arrest for ulterior motives such ' as humiliation and unjustified harassment was a valid consideration for grant of pre-arrest bail. Similar rule was laid down in Zia-ul-Hasan's case. In our opinion. therefore, the order of the learned Sessions Judge, did not in any respect, disregard the well-recognized principle for grant of pre-arrest bail to the petitioner. Without upsetting the finding, reached by the learned Sessions Judge that the petitioner had been involved for ulterior motives of harassing due to enmity existing between the parties, the learned Judge in the High Court was not justified to invoke his suo motu powers for the purpose of canceling the order of bail."

7. This Court in the above-referred salutary judgment rendered by a five members' bench has broadened the scope of pre-arrest bail and held that while granting extraordinary relief of pre-arrest bail, merits of the case can be touched upon. Hence, virtually the scope of pre-arrest bail has been extended by this Court while rendering the afore-referred judgment. Even otherwise, this aspect of the law further lends support from the bare reading of provisions of Section 497/498 Cr.P.C. The word 'further inquiry' has wide connotation. Interpretation of criminal law requires that the same should be interpreted in the way it defined the object and not to construe in a manner that could defeat the ends of justice. Otherwise,

an accused is always considered a 'favorite child of law'. When all these aspects are considered conjointly on the touchstone of principles of criminal jurisprudence enunciated by superior courts from time to time, there is no second thought to this proposition that the scope of pre-arrest bail indeed has been stretched out further which impliedly persuade the courts to decide such like matters in more liberal manner. Because basic law is bail not jail. Otherwise, the liberty of a person is a precious right, which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Denial of liberty of a person is a serious step in law, therefore, the Courts should apply judicial mind with deep thought for reaching at a fair and proper conclusion. Such exercise should not be carried out in vacuum or in a flimsy or casual manner as that would defeat the ends of justice because if the accused is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration he had already suffered. Even none of the provisions of Cr.P.C provide any remedy to be claimed by the petitioner for its compensation.

8. *In view of the facts and circumstances and the spirit of the law as stated above, we are of the considered view that the petitioner has made out a case for grant of extraordinary relief of pre-arrest bail. Resultantly, we convert this petition into appeal, allow it and set aside the impugned order. The ad-interim pre-arrest bail granted to the petitioner by this Court vide order dated 15.06.2021 is hereby confirmed.*

JUDGE

JUDGE

JUDGE

Islamabad, the
6th of September, 2021
Approved For Reporting
Khurram