

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

CRIMINAL PETITION NO.950 OF 2021

Against the Order dated 29.07.2021
passed by Lahore High Court, Rawalpindi
Bench, in CrI.Misc. No.1339-B/2021

1. Resham Khan s/o Falak Sher and
 2. Zahid Iqbal s/o Resham Khan
- ...Petitioners

VERSUS

The State through Prosecutor General Punjab,
Lahore and another

...Respondents

For the Petitioners: Mr. Azam Nazeer Tarar, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Ch. M. Sarwar Sandhu, Addl.PG
Abdul Rehman, SI

For Respondent-2: Malik Ghulam Mustafa Kandwal, ASC

Date of Hearing: 07.10.2021

ORDER

MUHAMMAD ALI MAZHAR, J:- This Criminal Petition for leave to appeal is directed against the order passed by the Lahore High Court, Rawalpindi Bench on 29.07.2021 in CrI.Misc.No.1339-B/2021, by means of which the petitioners applied for bail after arrest in FIR No.54/2021, lodged under Sections 302/109/148/149/114 PPC at Police Station, Lillah, District Jhelum was dismissed.

2. The gist of F.I.R lodged by the complainant on 23.03.2021 divulges the allegations that on the day of occurrence when his brother Qazi Rab Nawaz was going to his house on a motor bike, the present petitioners armed with Kalashnikov along with Khawar Shehzad armed with pistol and an unknown person with two accomplices Babar Shehzad and Sarsa Khan, both armed with pistols, intercepted the deceased and the petitioner No.1 made burst shot with his Kalashnikov on the front of his abdomen, thereafter, the petitioner

No.2 made burst short with his Kalashnikov on the left side of body of deceased. As claimed by the complainant the occurrence was witnessed by Faisal Nawaz and Tayyab Rehman who were following Rab Nawaz, whereas complainant himself reached at the spot after hearing the fire shots when accused persons were escaping from the crime scene.

3. The learned counsel for the petitioners argued that the learned High Court while rejecting the bail plea failed to consider the major contradictions in between ocular account and medical evidence. The complainant has also filed private complaint regarding the same occurrence but with different allegations. It was further contended that the detention of the petitioners would serve no useful purpose when the investigating agency has declared them innocent and placed their names in Column No.2 of the Challan. The learned counsel further contended that the High Court has wrongly discarded the result of investigation based on CCTV footage showing the presence of petitioners at a different spot at the time of occurrence. The learned counsel invited our attention to the autopsy report and argued that allegedly the petitioner No.1 made fire shots which caused injuries to the deceased on front of his the abdomen but the medical evidence contradicts this allegation as no entry wound was find out on the front side of the abdomen. The post-mortem report describes all injuries on upper part of the body with entry wounds from back side.

4. The Additional P.G did not deny that the names of the present petitioners are placed in Column No.2 of the Challan hence he could not point out any plausible reason for refusing the bail, however he only added that the complainant (respondent No.2) has already filed a private complaint for the same occurrence which is pending.

5. The counsel for the complainant (respondent No.2) argued that the petitioners are involved in the commission of offence but the prosecution failed to properly investigate the matter and placed their names in Column No.2. He further argued that the complainant has already filed a private complaint to prove the guilt of petitioners.

6. Heard the arguments. The pith and substance of FIR demonstrates that complainant reached at the scene of crime when the accused persons were escaping from the spot which explicates that

complainant was himself not the eye-witness of the incident but he was informed by two other witnesses, who were allegedly present at the scene of offence. In the FIR the complainant claimed that the firearm injuries were shot on the front side of abdomen of deceased, therefore, the learned counsel for the petitioners invited our attention to the postmortem report with regard to description of injuries. The postmortem report does not show any wound of entry on abdomen from front side but showing exit wounds as per description and attached sketch. According to the Challan submitted by the Investigation Officer, the names of petitioners are mentioned in Column No.2 and they were not sent for trial and for this reason the complainant has already filed a private complaint. The locale of injury in the FIR were pointed out by the complainant on the front of abdomen and left side of his body, whereas in the private complaint the complainant has mentioned that the petitioners had caused firearm injuries on different parts of body of deceased and did not point out any specific locale of injuries. It is well settled exposition of law that at bail stage deeper appreciation of evidence couldn't be made out but the court has to get the picture through tentative assessment of prosecution story, however in order to reach even a tentative assessment, whether the petitioners have made out a case of further inquiry or not, the court has to glean and congregate the composite effect of incriminating material brought on record by the prosecution, inconsistency or contradiction if any in the statement made in the FIR vis-à-vis postmortem report and or the situation where ocular evidence is not supported by the medical evidence.

7. The investigation has been completed; report under Section 173 Cr.P.C has been already filed. The case emanating from FIR and Private complaint are proceeding in the trial court. The fact remains that at this stage, no tangible evidence or incriminating material has been found or collected by the I.O against the petitioners, hence, there shall be no useful purpose achieved or attained to hold him behind bars. Albeit we are considering the question of bail, even at this stage, the court cannot lightly ignore the opinion of investigating officer but it needs to be considered in collocation and juxtaposition. In the State case, it is for the prosecution to prove the guilt of accused beyond reasonable doubts but at present no incriminating material has been produced by the prosecution against the petitioners. In tandem, we are also sanguine that the opinion expressed by Investigation agency is

neither binding on court nor can be taken as gospel truth but it depends on the circumstances of each case to be considered. In the case in hand, the court cannot get rid of or brush aside it unless some other cogent reasons or extenuating circumstances are available to discard and dislodge such opinion to come to another judicious and sagacious conclusion.

8. The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not.

9. This court in the case of Hakim Ali Zardari versus State (PLD 1998 Supreme Court 1) held that the law of bails is not a static law but is growing all the time moulding itself with the exigencies of time. The main purpose of keeping an under trial accused in detention is to prevent repetition of the offence with which he is charged or perpetration of some other offence and to secure his attendance at the trial. Such object has to be achieved within the framework of a man's right to liberty, which he enjoys along with other rights, collectively known as his freedom. Whereas in the case of Zaigham Ashraf v. State and others (2016 SCMR 18), this court made it clear that it is for the prosecution to show sufficient material/evidence, constituting 'reasonable grounds' that accused has committed an offence falling within the prohibitory limb of Section 497, Cr.P.C whereas the accused has to show that the evidence/material collected by the prosecution creates reasonable doubt in the prosecution. If the accused is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration. According to the

dictum laid down in the case of Chaudhry Shujat Hussain v. The State (1995 SCMR 1249), this court held while deciding the bail application court has to tentatively look to the facts and circumstances of the case and in order to ascertain whether reasonable grounds exist or not, the court should not probe into the merit of the case but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused. The rule deducible from Alam Zeb and another v. State and others (PLD 2014 S.C. 760), expresses that reasonable grounds have to be grounds which are legally tenable, admissible in evidence and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary or presumptuous. The prosecution in order to make out a case for refusal of bail to an accused is primarily supposed to place on record material on basis of which he is believed to be involved in a non-bailable offence, but in absence of such material the court for the purpose of releasing the accused on bail, instead of dilating upon the facts of the case in details, can dispose of the matter by holding that his detention is unjustified or unreasonable. Reference can be made to PLD 1996 S.C. 241 & PLD 2002 S.C. 572.

10. Recently this court in the case of Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), held that at the bail stage the court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un rebutted, may lead to the inference of the guilt of the accused. In the recent unreported judgment rendered in Civil Petitions No.3637 & 3638/2019 (Muhammad Iqbal Khan Vs. National Accountability Bureau (NAB)), this court held that mere accusation of an offence would not be sufficient to disentitle an accused from being bailed out. There should be "reasonable grounds" as distinguished from mere allegations or suspicion.

11. We have cautiously scanned and ruminated the material placed on record and in our tentative assessment, there are no reasonable grounds for believing the petitioners have committed the alleged offences but there are sufficient grounds for further inquiry in terms of Section 497 (2) of Cr.P.C, therefore, on 7.10.2021, for the reasons to be recorded later, this Criminal Petition was converted into Appeal and allowed. The petitioners were granted post arrest bail on furnishing bail bonds to the tune of Rs.200,000/- (Rupees two hundred thousand) with two sureties each in the like amount to the satisfaction of the Trial Court. Above are the reasons in the aid of our short order. The observations made in this order are tentative in nature and shall not prejudice the case of either party before the trial court.

Judge

Judge

ISLAMABAD

7th October, 2021

Approved for reporting

Khalid