

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1017/2020

(Against order dated 05.08.2020 passed by
Lahore High Court, Rawalpindi Bench in
Crl. Misc. No.1378-B/2020)

Sher Afzal :
... Petitioner(s)

Versus

The State and another : Respondent(s)
...

For the Petitioner(s) : Mr. Muhammad Ikhlaque Awan, ASC
For the State : Mr. Muhammad Usman DPG
For the Complainant : Nemo

Date of Hearing : 12.11.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J: - Petitioner has assailed the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 calling in question the order of Single Bench of Lahore High Court, Rawalpindi Bench dated 05.08.2020 in Crl. Miscellaneous No.1378-B/2020 declining post arrest bail to the petitioner with prayer to grant the same in the interest of safe administration of criminal justice.

2. The facts prompted to file this petition are that one Mst. Seemab Wasif lodged a crime report bearing No.234/2020 dated 20.05.2020 offence u/s 302/34 PPC registered with Police Station Kahota District Rawalpindi. As per contents of the crime report, it is mentioned that the petitioner alongwith other co-accused in furtherance of their common intention committed the murder of Wasif Khan and Asim Khan by resorting of indiscriminate firing by co-accused namely Shahid and Shafique. The allegation against the petitioner is merely a proverbial "Lalkara" whereas he is also assigned the role of causing kicks to both the

deceased while they were lying on the ground after sustaining fire shots. The petitioner applied for post arrest bail before the court of first instance which was entrusted to learned Additional Sessions Judge, Rawalpindi. The learned trial court dismissed the application of the petitioner vide order dated 20.07.2020. The petitioner assailed the order before learned High Court, Rawalpindi Bench through moving an application bearing Criminal Miscellaneous No.1378-B of 2020. The learned Single Bench of High Court dismissed the same vide detailed order dated 05.08.2020, hence, the instant petition for the grant of post arrest bail.

3. At the very outset, it has been argued by the learned counsel for the petitioner that petitioner has been falsely roped in this case against actual facts and circumstances. Contends that the petitioner is an old man, suffering from ailment and as such he is physically unable to perform the role ascribed to him. Further contends that son of the petitioner namely Shahid who is one of the main perpetrator of the occurrence beside Muhammad Shafique has already been disowned by the petitioner through a proclamation which was published in newspaper much prior to the occurrence. Lastly it has been contended that co-accused Mst. Zeenat Bibi to whom the role of kicking the dead body is also assigned was granted pre-arrest bail by the learned trial court, therefore, the petitioner is also entitled for concession of bail on the plea of consistency.

4. On the other hand, learned Law Officer has controverted the contentions raised by the learned counsel for the petitioner. The crux of the arguments advanced by the learned Law Officer is that the petitioner is duly nominated in the crime report with special allegation of raising commanding "Lalkara". Further contends that two persons were done to death in a brutal manner against a definite motive. Contends that the case of co-accused Mst. Zeenat Bibi is distinguishable, hence, petitioner cannot

claim bail on the plea of consistency. Contends that the petitioner is not entitled for the relief sought for.

5. We have heard the learned counsel for the parties and gone through the record.

It is most salutary principle of law that each criminal case has its own facts and circumstances and it cannot coincide with others. In the instant case, there is no denial to this fact that the petitioner is nominated in the crime report wherein he is assigned role of raising “Lalkara” whereas the co-accused of the petitioner resorted to indiscriminate firing with their respective weapons causing death of Wasif Khan and Asif Khan. Undeniably, the accusation levelled against the petitioner is twofold:-

- (i) Raising of “Lalkara”.
- (ii) Kicking the dead bodies after the occurrence.

Admittedly the petitioner is aged about 65 years and he is also suffering from ailment. Close scrutiny of the accusation levelled by the prosecution, no overt-act is ascribed to the petitioner except the proverbial “Lalkara”. The question which require determination is whether the “Lalkara” raised by the petitioner was commanding in nature or that was mere a proverbial “Lalkara”. During the course of proceedings before us, it has been vehemently argued by the learned counsel for the petitioner that the petitioner cannot be saddled with the responsibility of sharing common intention with the co-accused on the ground that the petitioner was not enjoying good relationing with co-accused especially Shahid, because of the reason that a proclamation in this regard was already published in the newspaper disassociating itself from all affairs of said Shahid and he was also deprived from movable and immovable property owned by the petitioner. This Court vide order dated 23.10.2020 persuaded the learned

counsel to offer his good offices for the production of said Shahid who is fugitive from law. The learned counsel at the strength of the proclamation published in the newspaper has stated that as the petitioner is behind the bar and he has no access to his son with whom he has already strained relations, therefore, it is not within his command to produce him before the police. Keeping in view the arguments of the learned counsel and law on the subject, as the proclamation was issued much prior to the lodging of the crime report; question qua its being a commanding "Lalkara" or otherwise it seems to be determined by the learned trial court after recording of evidence. As far as second limb of the accusation is concerned, co-accused with similar allegation was extended pre-arrest bail by the learned trial court; hence, the petitioner is entitled for the same on this score alone. Liberty of a person is a precious right which has to be resolved in favour of the accused being favourite child of law, denial of same require extreme compelling reasons.

6. Keeping in view the facts and circumstances narrated above and law on the subject, we are of the considered view that the case of the petitioner is of further inquiry fully covered u/s 497(2) Cr.PC entitling for concession of bail. As a consequence, leave to appeal is granted in the instant petition while converting it into appeal and the same is allowed. The petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of the learned trial court/Duty Judge.

JUDGE

JUDGE

Islamabad, the
12.11.2020
Approved for reporting
*Athar