

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE ATHAR MINALLAH

CRIMINAL PETITION NO. 1619 OF 2022

(On appeal against the order dated 08.12.2022
passed by the Lahore High Court, Lahore in CrI. Misc.
No. 71061-B/2022)

Abdul Rehman @ Muhammad Zeeshan

... Petitioner

VERSUS

The State and others

... Respondents

For the Petitioner: Ch. Muhammad Ashraf Jalal, ASC with
petitioner
(via video link from Lahore)
Mr. Anis Muhammad Shahzad, AOR

For the State: Ch. Muhammad Sarwar Sidhu, Addl. P.G.
Mr. Muhammad Nadim, DSP
Mr. Muhammad Ashraf, SI

Date of Hearing: 02.02.2023

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 petitioner has assailed the order dated 08.12.2022 passed by the learned Single Bench of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 213 dated 07.09.2022 under Sections 337-A(ii)/337-L(ii)/147/149 PPC at Police Station Shah Gareeb, District Narowal, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he while armed with '*churri*' assaulted upon the complainant and gave him a blow on the left side of the head of the complainant.

3. At the very outset, it has been contended by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the FIR was lodged with an inordinate delay of five days, which shows that the same was lodged after deliberation and consultation. Contends that the case against the petitioner is false, fabricated, fictitious and based on ulterior motives and *mala fide* intentions. Further contends that the co-accused of the petitioner, who were ascribed the similar role, have been granted pre-arrest bail by the learned Trial Court, therefore, following the rule of consistency the petitioner also deserves the same treatment to be meted out. Lastly contends that the impugned order is against the law and facts, as such, the same is not maintainable and is liable to be set at naught.

4. On the other hand, learned Law Officer has defended the impugned order. It has been contended that the petitioner has specifically been nominated in the crime report and a specific allegation of causing injury on the person of the complainant has been leveled against him, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record.

As per the contents of the crime report, the petitioner along with co-accused while armed with '*churri*' assaulted upon the complainant and gave him a blow on the left side of the head. The crime report was lodged after an inordinate delay of five days for which not even a single word has been put forward by the complainant. The delayed registration of FIR *prima facie* shows deliberations and consultation on the part of the complainant. We have been informed that co-accused of the petitioner, who were specifically named in the crime report, have been granted pre-arrest bail by the learned court of competent jurisdiction. Keeping in view the peculiar facts and circumstances of the present case, the possibility cannot be ruled out that the petitioner has been involved in the case by throwing a wider net by the complainant especially when it is the case of the petitioner that the FIR was registered against one Zeeshan but the

name of the petitioner has subsequently been added portraying him as Abdul Rehman alias Muhammad Zeeshan. However, we do not want to give any finding on this aspect of the matter, lest it may prejudice the case of either of the parties before the Trial Court. It is the Trial Court, who after recording of evidence would decide about the guilt or otherwise of the petitioner and till then the petitioner cannot be put behind the bars for an indefinite period. This court has time and again held that liberty of a person is a precious right, which cannot be taken away. Merely on the basis of bald allegations, the liberty of a person cannot be curtailed. The petitioner is a young man having no criminal history and keeping him behind the bars with the hardened criminals would not be in the interest of justice. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order and confirm *ad interim* pre-arrest bail granted to the petitioner by this Court vide order dated 04.01.2023.

JUDGE

JUDGE

JUDGE

Islamabad, the
2nd of February, 2023
Approved For Reporting
Khurram