ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No. 1134-B/ 2020
Muhammad Shawaiz Abbasi, etc.
Versus
The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22.02.2021	Petitioners *(Muhammad Shawaiz Abbasi and Naji Ullah Abbasi)* on ad-interim bail with Mr. Mazhar Akram Awan and Mirza Irfan Ghazanfar, Advocates, Syed Shahbaz Shah, State Counsel, Raja Gul Nawaz, Advocate for respondent No.2, Muhammad Abbas ASI with record.

Through this petition, petitioners have prayed for pre-arrest bail in F.I.R No. 272 dated 05.06.2020 under section 337-A(i), 337-A(ii), 337-A (iii), 337-F, 148/149, P.P.C, registered at Police Station Bhara Kahu, Islamabad.

2. According to the allegations set-forth in the F.I.R, on 29.05.2020, at about 07:45 pm, within the area of Malata, Bhara Kahu, petitioners along with co-accused launched an attack upon the complainant and his companions when the latter were de-loading stones in their land contained in khasra No.2633. Petitioner Shawaiz allegedly inflicted blows with iron-rod on the head and arm of Nadim while petitioner Naji ullah inflected cudgel blows on the person of Imran.

3. Learned counsel for the petitioner contends that the punishment provided for the offence is Arsh and Daman; that complainant

party was aggressor; that they reported the matter prior in time but the police with malafide, registered the F.I.R on the application of complainant; that it is a case of cross-version, therefore, petitioners are entitled to the concession of pre-arrest bail. Learned counsel placed reliance upon case laws reported as **2010 SCMR 1219, 2012 PCr.LJ 1560, 2007 MLD 880, 2006 YLR 1591, 2007 MLD 1067 and 2017 YLR 991 Lahore**.

4. On the other hand, learned counsel for the complainant argued that earlier pre-arrest bail of the petitioners was turned down by the learned ASJ; that they were required to surrender before the law; that extra ordinary concession is not available to the petitioners which is meant to save innocent and not the people like petitioners and that Medico-legal Report **('MLR')** supports the version of the complainant, therefore, petitioners are not entitled to the concession of pre-arrest bail. Reliance is placed upon case laws reported as **2020 SCMR 313, 2020 SCMR 249, PLD 2020 SC 293, 2016 SCMR 2064, 2015 SCMR 1394, 2009 SCMR 725, 2017 P.Cr.LJ 71 Lahore, 2011 P.Cr.LJ 601 Karachi and MLR 1999 Criminal 28**.

5. Learned State Counsel adopted the arguments advanced by the learned counsel for the complainant.

6. Arguments heard, record perused.

7. The remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from

false implication, rigors of trial and humiliation. The Hon'ble Apex Court in case of "***Gulshan Ali Solangi and others v. The State through P.G. Sindh***" *(2020 SCMR 249)* has graciously held that "*grant of pre-arrest bail is a remedy routed into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honour. It cannot be granted in every run of the mill criminal case, particularly to the accused confronted prima facie charges structured upon material/ evidence, warranting custody, that too, on the basis of positions/pleas verification whereof, is consequent upon recording of evidence*."

Whether present petitioners ,*prima facie,* and for exclusive purpose of anticipatory bail only, are innocent and entitled to be saved from the horrors of investigation by way of custody to the police authorities?

8. For the purpose, record has been examined which shows that role assigned to petitioner *Muhammad Shahvaiz Abbasi* is of causing iron-rod injuries on the head and arm of Nadeem. Record further divulges that the injured was examined on the same day, while MLR confirms that the injuries have been inflicted with blunt weapon which resulted into bone expose. The injuries attributed to said petitioner falls under Section 337-A(iii) PPC "*Shajjah-i-Hashimah",* punishable

with Arsh, 10% of Diyat and imprisonment which may be extended **up to ten years as Ta'zir.**

9. Co-petitioner *Naji-Ullah* was also assigned identical role as he allegedly caused cudgel injuries on the person of Imran Shahzad. The injured was examined on the same day while MLR confirms that the injuries have been inflicted with blunt weapon which medically measured as an injury of 3x1 cm laceration on right side of forehead, exposing underlying bone. One of the injuries falls under Section 337-A(ii) P.P.C "*Shajjah-i-Mudihah"* punishable with Arsh, 5% of Diyat and imprisonment which may be extended up **to 5 years as Ta'zir.**

10. Both the petitioners are specifically nominated with role of causing blunt weapon injuries on the person of injured Nadeem and Imran Shahzad. MLR corroborates the version of the complainant with further corroboration qua kind of weapon.

11. The crime weapon including iron rod and cudgel through which severe injuries were caused are yet to be recovered for which their arrest as per peculiar circumstances is necessary.

12. It is a pre arrest bail petition while question as to which party was aggressor would be determined at the trial after recording of evidence.

13. In addition, it also brings out of record that both the sides at the first instance moved the

learned ASJ to avail the extra ordinary concession. The petitioners' pre-arrest bail petition was dismissed while the same treatment was afforded to alike petition of accused in cross-version. The latter did not opt to move this Court and surrendered to the process of law while the petitioners approached this Court which factor is also required to be looked into while deciding a pre-arrest bail petition. Keeping in view peculiar circumstances of the case guidance is also taken from the latest pronouncement of the Hon'ble Apex Court in **Criminal Petition No.149-K of 2020**, titled *"Kamran Ataullah and another v. The State*" wherein it is held as under:-

> "*It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through the collection of information/evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extra ordinary be all means; it is not a case in hand. Petition fails. Leave declined." (Emphasis added)*

14. There is a significant distinction between pre-arrest and post-arrest bail. One meant as extra-ordinary remedy while latter as an ordinary remedy. Thus, it is obvious for extending extra-ordinary relief, like circumstances/facts are

required. The seeker of the remedy should be an innocent and law abiding citizen. Allegation of his involvement, should be mere an allegation tainted with malafide from either side i.e. of police or complainant. When noticed, that allegation qua the petitioners, these are corroborated with independent medical evidence, being tentatively assessed. They took law in their hands. There is not a case, where only *diyat*, *arsh* is payable alone, side-by-side imprisonment even up to ten years is provided which is included in the limb of Section 497 of the Cr. P.C. Hence, circumstances warrant to refrain from extending the benefit of extra ordinary relief.

15. The case laws relied upon by learned counsel for the petitioners do not extend any help to the petitioners due to having distinct facts and circumstances.

16. The cumulative effect of above discussion/ findings is that, while evaluating all available material tentatively, this Court has come to the conclusion that specific and exact role is attributed to the petitioners of causing iron-rod and cudgel injuries on the person of injured Nadeem and Imran Shahzad, MLRs corroborate the contents of the F.I.R, both the injured sustained blunt weapon injuries with bone expose, recovery of crime weapon is yet to be effected, it is yet to be established after recording of evidence pro and contra as to which party was aggressor, motive, being admitted scuffle and

free fight, cannot be pressed into service at this stage to make a case of malice or malafide on the part of complainant, petitioners are not entitled to the concession of post arrest bail.

17. In view of above, the instant bail petition is **dismissed.** Ad-interim bail granted to the petitioner vide order dated 02.11.2020 is recalled.

18. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

APPROVED FOR REPORTING