ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Criminal Misc. No. 1361-BC/2021

Muhammad Shahzad

Versus

Muhammad Shahbaz& another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.02.2022:	Syed Ali Raza Kazmi, Advocate for petitioner/ complainant, Mr. Ajmal Raza Bhatti, Advocate for respondent No.1/accused. Mr. Sohail Khursheed, State Counsel with Fakhar Abbas, SI

This Crl Misc. under Section 497(5) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**") is arising out of order dated 06.12.2021, passed by the learned Additional Sessions Judge-III, Islamabad-East whereby respondent No.1/accused Muhammad Shahbaz was allowed pre-arrest bail in FIR No. 578, dated 07.11.2021, under Sections 302, 148, 149& 34 PPC, Police Station Lohi Bher, Islamabad.

2- The Woe-wodge complainant Muhammad Shahzad father of the deceased described rueful incident that on 07.11.2021 at about 05:00 pm, accused Saboor & Osama visited his house, situated in village Kortana, Post Office Rawat, District Islamabad, where he along with his brother Ashiq Hussain were already present. The accused persons allegedly took away his son Sheraz Khan, with them on the asking of co-accused Shahbaz (respondent No.1) resident of Dhoke Chaudhrian.

3- It was further alleged that when Sheraz son of the complainant, did not come back till 09:30 pm, Jawad, the other son of the complainant made a phone call at the cell number of

Sheraz which was responded by accused Osama, who informed about a quarrel, sustaining injury and death of Sheraz.

4- On coming to know about the occurrence, complainant reached Arif Hospital Jinnah Garden where he found his son Sheraz dead with a sharp edged weapon injury on his left flanks.

5- After the registration of FIR, respondent No.1 applied for pre-arrest bail, to the Court of Competent Jurisdiction, which was confirmed by the learned Additional Sessions Judge-III, Islamabad (East) vide order dated 06.12.2021, being impugned through the instant cancellation petition.

6- Learned counsel contended that the accused is specifically nominated in the FIR with allegations of instigating and ample incriminating materialis available on record in shape of confessions of the co-accused before the police authorities wherein the accused petitioner has also been nominated by the co-accused, there was no justification to extend extra ordinary concession of pre-arrest bail.It is further argued that the investigation of a case entailing capital punishment has been given an end by allowing pre-arrest bail to an accused who was squarely involved in the commission of alleged offence. It is also contended that the impugned order, being non-speaking and devoid of reasons is liable to be set aside.

7- On the other hand, learned counsel for the respondent No.1/accused contends that no incriminating material has come on record against the said respondent; that no overt act is attributed to him while nothing was to be recovered and that no ground has been urged warranting cancellation of bail, therefore, petition is liable to be dismissed.

8- Heard, record perused.

9- The Hon'ble Supreme Court of Pakistan in the recent *Order dated 08.11.2021 in case of Abdul MajeedAfridi v. The State and Abdul LatifAfridi, Crl. P. No. 632 of 2021* while deciding bail cancellation petition in a murder casehas reiterated the principles governing cancelation of bail laid down in the case

of "*Samilullah and another V. LaiqZada and another*(**2020 SCMR 1115)**, followed in Criminal Petition Nos. 1459/2020, 1523/2020, 970 to 976/2021 & Criminal Petition No. 1145-L of 2020: which are as under:-

"i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.

ii) That the accused has misused the concession of bail in any manner.

iii) That accused has tried to hamper prosecution evidence by persuading pressurizing prosecution witnesses.

iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.

v) That the accused has attempted to interfere with the smooth course of investigation.

vi) That accused misused his liberty while indulging into similar offence.

vii) That some fresh facts and material has been collected during the course of investigation with tends to establish guilt of the accused."

10- The parameters on the subject are unambiguous and guide to hold that a bail granting order having patent illegality, either erroneous or factually incorrect can be interfered with particularly when the same is in defiance of the material available on the record. Reliance is placed upon case law reported as *Maqbool Ahmed Mahessar& others v. National Accountability Bureau through its Chairman & others*. **2021 SCMR 1166** "Similarly, grant of pre-arrest bail in a cognizable/non-bailable offence is a remedy, most extraordinary in the nature of judicial protection, extended by diverting usual course of law for the sole purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique; the protection is based upon equity and cannot be extended in every run of the mill criminal case prima facie founded upon incriminatory evidence, warranting custody for investigative purposes"

11- In the present case, the petitioner was allowed extra ordinary relief of pre-arrest bail, which is meant to protect an

accused from false accusation, malice and malafide and humiliation of arrest. It cannot be invoked in every criminal case where prima facie some tangible evidence regarding commission of an offence is available on record. The purpose behind the arrest,is to thresh out the evidence which the alleged accused is holding. The remedy of pre-arrest bail is certainly not a substitute for post arrest bail.

12- Although under the principle there is hard and fast rule not to give exhaustive reasoning while deciding a bail matter as only tentative assessment is to be made but it does not mean that the decision so made is based on just few lines. Such type of dispensation, in no way, can be termed justified, well reasoned and in accordance with the principleof natural justice. It is further to be highlighted that a pre-arrest bail cannot be granted as a substitute for the post arrest bail guidance is solicited from case titled as *Abid Hussain v. Tassawar Hussain & another* **(2021 SCMR 518)**.

13- In the present case, the learned court of first instance extended extra ordinary concession of pre-arrest bail to respondent No.1 by observing as under:-

"As far as accused/petitioner Muhammad Inam Siddiqui and Muhammad Shahbaz are concerned, they were not present at the spot. No recovery is to be effected from their possession. No role of causing injuries has been attributed to them. Hence, as per view of this Court, a good case of grant of bail before arrest is made out in favour of accused/petitioners other than accused/ petitioner Muhammad Osama."

14- At this juncture, it is necessary to mention that respondent No.1 is one of the accused persons of the instant murder case. The observations so mentioned that respondent No.1 was not present at the spot and that nothing is to be recovered from his possession besides having no role of causing injuries, on the face of it, are result of non-reading of material collected by the prosecution.

15- The record indicates that it is mentioned in the FIR that co-accused Saboor and Osama took away the deceased Sheraza long with them on the asking of respondent No.1. The CDR of

the said respondent available on file indicates his presence near Jinnah Garden, Islamabad at the relevant time. Not only this but a witness Muhammad Waheed in his statement recorded under Section 161 Cr.P.C alleged to have witnessed the respondent No.1 in company of co-accused Saboor & Osama and the deceased Sheraz on the day of incident.

16- In presence of above incriminating material coupled with the fact that no malice and malafide on the part of complainant has even been alleged nor it is mentioned in the impugned order, the exercise of extra ordinary discretion in the attending circumstances of the case, is unjust, arbitrary and is result of miscarriage of justice. It also does not qualify status of a well-reasoned order, being devoid of reasons, rational with the facts of the case. Reliance is placed upon the dictum laid down by the Hon'ble Apex Court in case titled as *Mst. Asia Qaseem & others v. Alamzaib & another.* **(2021 SCMR 302).**

17- In view of above, impugned order dated 06.12.2021 is not legally sustainable, it is accordingly set-aside and the pre-arrest bail granted to respondent No.1 by the learned Additional Sessions Judge-III, Islamabad (East) is recalled.

18- The instant criminal miscellaneous petition is **allowed** in the above terms.

(ARBAB MUHAMAMD TAHIR)
JUDGE

A.R. Ansari