ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No. 157 of 2022

Manawar Khan

Versus

The State

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.

18.01.2022 Ch. Wajid Hussain Advocate:

ARBAB MUHAMAMD TAHIR, J: Through the instant writ petition, petitioner/accused namely Manawar Khan has prayed for *quashing* of FIR No. 1146, dated 14.12.2021, U/ss 427, 506(ii), 452 & 34-PPC, Police Station Koral, Islamabad.

2- As per allegations contained in FIR, on 5.12.2021 at about 11:30 pm, within the area of Tarlai Khurd, Gangal House, area of PS Koral, Islamabad, petitioner along with 4-5 unknown persons while armed with firearms trespassed into the house of respondent No.2/complainant, made firing and extended life threats.

3- According to the petitioner, no such incident took place which is evident from CCTV footage collected by the police; that there was a sale transaction between the parties; that respondent No.2 failed to honour his commitment and that petitioner has already filed a civil suit, therefore, further proceedings would be abuse of process of law. Learned counsel has

referred case law reported as **2012 P Cr L J 1777.**

4- Heard, record perused.

5- Record available on file shows that the subject FIR was registered on 14.12.2021 while pre arrest bail petition of the petitioner is pending and fixed for tomorrow i.e. 19.01.2022.

6- The grounds being pressed for seeking quashment require deep thorough probe and investigation, which is not permissible in constitutional jurisdiction.

7- It is settled principle that the trial court can acquit the accused under Section 249-A Cr. P.C and 265-K Cr. P.C, as the case may be, at any stage of the proceedings and in the circumstances of each case, the appropriate remedy for the accused appears to be to request the trial court to consider their case under the provisions of law. The exercise of extra ordinary discretion is permissible in cases where on the basis of facts admitted and patent on record, no offence can be made out, and then it would amount to abuse of process of law to allow prosecution to continue with the trial. Reliance is placed upon cases of "State through Advocate-General, NWFP Peshawar and others. V. Gulzar Muhammad and others" (**1998 SCMR 873**) and "Miraj Khan V. Gull Ahmed and 3 others" (**2000 SCMR 122**).

8- In the case of "Ajmeel Khan V. Abdul Rahim and others." (**PLD 2009 SC 102**), after availing remedy of pre arrest bail, petitioner filed quashment petition which was dismissed by the High Court and then the matter came up for hearing before the Hon'ble Supreme Court of Pakistan. It was observed in the order that:-

> *"Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamounts to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police."*

9. The Hon'ble Supreme Court of Pakistan in the latest pronouncement in case of "Dr. Sikander Ali Mohi ud Din v. Station House Officer and others" (**2021 SCMR 1486**) has held that "Apart from this aspect of the case, as the matter was of criminal nature, the same cannot be closed down with a stroke of pen on the ground that civil litigation is pending adjudication between the parties coupled with the findings in a police investigation. It is now settled that criminal as well as civil proceedings can go side by side if the same is spelled out on the basis of cogent foundation."

10. It has further been held that *"the superior court of the country while dealing with such matter had already given finding* ***that if, prima facie, an offence has been committed, ordinary course of trial before the court should not be allowed to be defeated by resorting to constitutional jurisdiction of High Court****."* [Emphasis supplied*]*

11. The remedy of '*quashment*' is an extra ordinary remedy, to be invoked in extra ordinary circumstances and for doing so, prima consideration is to see that the very registration of FIR amounts to misuse of process of law or that same was registered without any legal justification. The frequent filing of such like petitions, as a matter of routine, not only results in

overburden of the courts but also makes the issue complex.

12. It has now become a common practice, that in every criminal case, besides availing remedy of pre arrest bail again and again, after withdrawing the first and then filing the same before the same court, without disclosing the facts, petitions for *quashment* are also being filed in route. **In addition, soon after filing of a petition in terms of Section 561-A Cr PC before this Court, police used to lay off its hand from the investigation which ultimately causes delay in timely submission of report under section 173 Cr. PC before the trial court within stipulated period of 14 days.**

13. In view of above, instant writ petition is accordingly **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari