ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Crl. MiscNo. 218 of 2022

Waseem Khan alias Bhola

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.
	16.03.2022	Mr. Mehtab Abassi, Advocate for petitioner. Mr. Mudassir Rizwan & Ms. Bushra Saleem, Advocates for respondents. Mr. Shahbaz Shah, State counsel alongwith Shafqat, Inspector.

Through the instant Crl. Misc., petitioner*(Waseem Khan alias Bhola*) is seeking bail after arrest in crime reported in FIR No.527, dated 03.09.2021, under Section 302, 324 & 337-A(i) PPC registered with police station Tarnol, Islamabad.

2. The FIR was registered on the statement of Gul Badin regarding an incident that took place on 03.09.2021 at about 8:25 p.m. within the area of Gulshan Iqbal Colony Tarnol against one Javed. According to the complainant he got information about the death of his son Hazrat Din and causing injuries to his friend Waseem Khan (petitioner) through the latter.

3. Subsequently, the complainant nominated the petitioner Waseem Khan as an accused, who during investigation disclosed about the commission of the offence and also got recovered the weapon of offence i.e. .30 bore pistol with two live cartridges.

4. The learned counsel contends that the petitioner has been falsely roped in the instant matter, as the petitioner was the first informant of the matter to the family of the deceased; that the complainant in supplementary statement recorded after four days of the incident has nominated the petitioner which speaks volumes of malafide on the part of the complainant; that the petitioner acted in good faith and informed the complainant, who after consultation and

deliberations has implicated the petitioner in the instant matter, which smacks malafide on part of the complainant and I.O of the case.

5. On the other hand learned State Counsel assistant by the learned counsel for the complainant argued that the petitioner has acted in a professional manner as after causing injuries to the deceased, informed the complainant and kept himself away for recording of his statement under Section 161 Cr.P.C while it is an admitted fact that the FIR was lodged on the information of the petitioner, as he was an eyewitness of the incident. This act of the petitioner created doubts in the mind of the complainant who nominated him subsequently and after the arrest, petitioner got recovered the pistol, allegedly used in the commission of offence, therefore, he is not entitled to the concession of bail.

6. Arguments heard, record perused.

7. Perusal of the record reveals that it is an admitted fact that the petitioner was nominated by the complainant in his supplementary statement recorded after four days of the lodging of the instant FIR. However, after the arrest, petitioner disclosed about the manner in which the offence was committed in reality, which caused death of the deceased and in pursuance of the disclosure he got recovered the crime weapon i.e. .30 bore pistol with two live bullets.

8. It is significant to note that during spot inspection on 03.09.2021, police collected 3 crime empties of .30 bore pistol and the same were sent to the Forensic Science Laboratory on 14.09.2021. Subsequently, the pistol recovered from the possession of the accused was also sent to the FSL on 27.09.2021, and as per the report of the FSL, the crime cartridge cases C-1 to C-3 matched as having been fired from the pistol recovered from the petitioner. Thus, the chain of events in the shape of statement of complainant, that of Javed Khan during investigation, recovery of cartridges, that of pistol and the positive report of FSL, is available on record which, prima facie, connects the

petitioner with the commission of alleged offence, wherein an innocent person has lost his life.

9. The Hon'ble Apex Court in the case of ***'AlamZeb and another v. State and others'*** **(PLD 2014 S.C. 760),** has laid down that reasonable grounds, have to be grounds which are legally tenable, admissible in evidence and appealing to a reasonable judicial mind, as opposed to being whimsical, arbitrary or presumptuous. Reliance is placed upon case titled **"*Abid hussain v. Tassawar Hussain & another (2021 SCMR 518)*"** *"Constitution pledged freedom to law abiding citizens; an offender, alleged to have committed some crime, was subject to a different legal regime; he was certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody, his release was regulated by the provisions of the code of criminal procedure, 1898 and he must make out a case within the statutory framework provided thereunder."*

10. According to the dictum laid down in the case of ***'Chaudhry Shujat Hussain v. The State'*** **(1995 SCMR 1249),** while deciding the bail application court has to tentatively look to the facts and circumstances of the case and in order to ascertain whether reasonable grounds exist or not, the court should not probe into the merit of the case but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused. Reliance is also placed on the latest pronouncement ***Basharat Ali v. The State (2022 SCMR 267)*** *"otherwise the ipse dixit of the police is not binding, rather it has persuasive value but that depends upon the facts and circumstances surfaced on the record. It is salutary principle of law that each criminal case has its own facts and circumstances and has to be decided according to the peculiar facts brought on the record. The contention of the learned counsel that the recovery has become inconsequential has no bearing at this stage and the same would be resolved after recording of the evidence."* Guidance is also solicited from **(2022 YLR 117).**

9. As mentioned above, sufficient tangible evidence highlighted above is available on record which, prima facie, connects the petitioner with the commission of alleged offence which is not only heinous, falls within the ambit of prohibitory clause of Section 497 Cr.P.C but also entails capital punishment.

10. The above tentative assessment guides to observe that petitioner is not entitled to the concession of post arrest bail at this stage. Consequently, the instant criminal miscellaneous is **dismissed**.

11. The observations made herein above are tentative in nature shall not prejudice the case of either party during trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran*//