ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No. 304-B of 2022

Mumtaz Hussain Shah

Versus

The State & another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.04.2022	Mr. Shakil-ur-Rehman, learned Advocate for the petitioner. Ch. Muhammad Sharafqat, learned Advocate for respondent No.2 Munir Khan Inspector.

Through the instant petition under Section 497 Cr.P.C, petitioner *(Mumtaz Hussain)* seeks post-arrest bail in case F.I.R. No. 60, dated 26.01.2022, registered under Sections 324, 395, 436, 506(ii), 353, 186, 427, 109, 148, 149 PPC and Section 7 A.T.A., at Police Station Shalimar, Islamabad.

2. According to the allegations set-forth in the F.I.R on 26.01.2022 at about 12:40 P.M., within the area of village Sinyari, Islamabad, when the complainant along with other officials of C.D.A had been performing official duty under the directions of the superiors and demolishing illegal constructions, petitioner along with others, duly armed with fire-arms, stones and sticks with premeditation launched attack upon the said officials besides the police contingent. In that pursuit, they allegedly made reckless firing in order to cause fear and terror and also obstructed the officials in performing their official duty. During the attack, they allegedly caused severe injuries to Operator of ASP, snatched wireless set, set the official vehicle on fire, caused injuries to 12-13 police officials, damaged the machinery present over there, broke down cell phones of the officials with stones and sticks and also cut the tyres of the official vehicles by inflicting blows with axes.

3. Learned counsel for the petitioner argues that petitioner has falsely been implicated with *malafide* intention in order to assert pressure to give up their legal demands regarding provision of compensation; that though the petitioner is nominated in the F.I.R

yet no specific role has been attributed to him; that there is no direct or indirect evidence or independent witness of the alleged occurrence; that there is no incriminating material to strengthen the allegation of conspiracy and abetment; that nothing is recovered from the petitioner; that neither the petitioner was present at the place of occurrence nor was arrested from the spot; that he was on his duty at the relevant time and affidavits were submitted to the Investigating Officer in this respect; that during investigation number of accused persons were found innocent; that there was a restraining order by this Court not to harass the natives of the locality; that offence under Section 395, 436 P.P.C and Section 7 A.T.A. is not made out while the other offences do not fall within the ambit of Section 497 of the Cr.P.C.; that petitioner is no more required for further investigation, therefore, entitled for the concession of bail; that during the investigation the wife of the petitioner has filed an application before the ASP concerned for impartial inquiry, wherein the accused has been found innocent, which has been placed on record through C.M. No. 157/2022.

4. On the other hand, learned counsel for respondent No.2/complainant repelled the above submissions by contending that petitioner is specifically nominated in the F.I.R; that all the assailants in prosecution of their common object with premeditation in order to cause panic and terror, launched an attacked duly armed with lethal weapons, resorted to ariel and direct firing, caused injuries to the police officials besides damage to the official vehicles which were also set on fire; that the offence alleged is heinous and cannot be taken lightly and that the petitioner is not entitled to the concession of bail.

5. Heard, record perused.

6. It is evident from the record that the petitioner is nominated in the F.I.R to have launched an attack upon the C.D.A. and police officials while duly armed with fire-arms, stone and sticks. During the occurrence, a vehicle was also set on fire which the police had taken in possession through a recovery memo. As per MLRs, the police officials who had been performing official duty sustained

blunt weapon injuries. In addition, about twenty-eight empties of .12 bore and .30 bore were collected from the crime scene.

7. It is also a matter of record that during investigation, petitioner confessed about his involvement in the commission of the alleged offence before the Investigating Officer and was recommended to be challaned, therefore, the fate of his subsequent exoneration in an inquiry would be determined by the Trial Court due to having divergent opinions. Furthermore, if there is any evidence which exculpates the petitioner from the commission of the offence it should have been considered by the I.O of the case while exercising powers under Section 169 Cr.P.C. The record is silent as to under what authority the ASP Police Circle Ramna, Islamabad has conducted the said inquiry, where affidavit has been sworn by some private persons regarding the plea of alibi of the petitioner on the day of incident. Even otherwise, while deeper appreciation at bail stage is not recommendable, the plea of alibi was taken by the petitioner during the so called inquiry conducted by the A.S.P. Police Circle Ramna, Islamabad, the appreciation of such a plea would go to the very root of the case. Let that be as it may even otherwise, the ipsi dixit of police retains no binding authority on courts particularly in presence of conflict inter-se investigation and inquiry.

8. The allegation of launching an attack upon the C.D.A and Police Officials and that too during discharge of their duties is not an ordinary assault but allegedly is an attempt to diffuse the State authority. Such an offence cannot be treated like regular offences against private individuals. The petitioner through his alleged act has caused disturbance in the public order and tranquility by using the weapons at a public place.

9. The offence alleged is not only heinous in nature, but also falls within the ambit of prohibition contained in Section 497 Cr.P.C., and Section 21-D(2) of A.T.A. 1997, clearly lays embargo for grant of bail in the offences that are punishable under Section 7 of ATA, therefore, in presence of sufficient incriminating material, petitioner has not been able to make out a case for grant of post arrest bail. Consequently, instant bail petition is **dismissed.**

10. The observations made herein above are tentative in nature and shall have no impact upon the trial of the case in any manner.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*