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

Criminal Misc. No. 345-B of 2022

Muhammad Shahbaz.

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.
	15.04.2022	Mr. Ajmal Raza Bhatti, Advocate for petitioner. Syed Ali Raza, Advocate for respondent. Mr. Shahbaz Shah, State counsel alongwith Fakhar Abbasi, S.I.

Through the instant criminal misc., petitioner/accused *Muhammad Shahbaz* prays for post-arrest bail in FIR No. 578 dated 07.11.2021, Under Section 302/34 PPC, PS Lohi Bher, Islamabad.

2- According to the allegations set-forth in the FIR, on 07.11.2021 at about 05:00 pm, co-accused Saboor and Osama visited the house of the complainant Muhammad Shahzad situated in village Kortana, Post Office Rawat, District Islamabad, where latter along with his brother Ashiq Hussain was already present. The accused persons (Saboor and Usama) allegedly took away Sheraz Khan, since deceased, with them on the asking of *petitioner Muhammad Shahbaz resident of Dhoke Chaudhrian*. 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 co-accused Osama, who informed about a quarrel, sustaining injury and death of Sheraz.

3- Learned counsel for petitioner argued that it was an unseen occurrence; that involvement of the petitioner is tainted with malafide; that no incriminating material was recovered from the petitioner; that petitioner is behind the bars since his arrest and no more required for further probe or investigation and that the material made basis to hold the petitioner guilty is discrepant

and retains no evidentiary value, therefore, petitioner is entitled for the concession of post-arrest bail as parameters for grant of pre and post-arrest bail are quite distinct with no overriding effect to each other. The learned counsel placed reliance upon case law reported as ***2017 SCMR 290, 2017 SCMR 728, 2020 SCMR 1409 & 2022 MLD 103***.

4- On the other hand, learned State Counsel assisted by leaned counsel for the complainant repelled the above submissions. It is asserted that sufficient incriminating material is available on record which *prima facie* connects the petitioner with the commission of alleged offence which falls within the ambit of prohibitory clause of section 497 Cr.P.C; that the petitioner had a commanding role which ultimately resulted in death of an innocent boy, therefore petition is liable to be dismissed.

5- Heard, record examined.

6- It is settled principle that while deciding a bail petition only tentative assessment of the material collected by the prosecution is to be made while deeper appreciation is not permissible. In case the material collected during the investigation, on tentative assessment, lends support in forming opinion qua involvement in the commission of alleged offence, same can be made basis not to exercise discretion in favour of an accused. The qualification of the material has been set as "*tangible*". Reliance is placed upon case of '*Muhammad Sarfraz Ansari. v. State and others*' (**PLD 2021 SC 738**).

7- In the present case material in the shape of statement of the complainant, that of PWs Waheed and Tayyab Nawaz are available on record, which are corroborated by the CDR, wherein at the relevant time presence of the petitioner had allegedly been found near the place of occurrence. The petitioner has been nominated by the complainant while police has found him guilty during investigation, therefore, sufficient incriminating material exists against the petitioner, which *prima facie* connects him with the commission of alleged offence, which not only falls within the ambit of prohibitory clause of Section 497 Cr.P.C, but entails capital punishment.

8. An accused, alleged to have committed an offence, would be subject to a distinct legal regime, certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody his release is to be regulated by the provisions of the code of criminal procedure 1898 and he has to make out a case within the statutory frame provided thereunder. Reliance is placed upon case titled as ***Abid Hussain v. Tassawar Hussain & another*** (**2021 SCMR 518**), ***Muhammad Imran v. The State & others*** **(2016 SCMR 1401).** Reliance is also placed upon ***Muhammad Khan v. Iqbal Khan and another*** **(2021 SCMR 2017),** wherein it was held by the Hon'ble Apex Court that **"Totality of circumstances does not admit space, that too, within the restricted scope of tentative assessment to hypothetically absolve the respondent from the indivisibility of his role of being in the community of intention with the allegation of active participation in the crime."** The law on the subject has also been laid down in the case of ***Syed Hammad Raza v. The State & others*** **(2022 SCMR 640).**

9- The case law relied upon by learned counsel for the petitioner does not extend any help to the petitioner due to having distinct facts and circumstances.

10- It is important to mention that the challan in the instant case has been submitted before the trial Court and the trial Court has taken cognizance of the matter, and proceedings have started.

11- Having examined the material available on record, it can tentatively be concluded that sufficient tangible evidence is available on record which, prima facie connects the petitioner with the commission of alleged offence, which is not only heinous but also entails capital punishment. Reliance is placed upon case titled as *Abid Hussain v. Tassawar Hussain & another* (**2021 SCMR 518**).Relevant portion is reproduced as under;-

> *"an offender, alleged to have committed some crime, is subject to a different legal regime; he is certainly entitled to due process of law and a fair and speedy trial, however, once taken in custody, his release is regulated by the provisions of the Code of Criminal*

Procedure, 1898 and he must make out a case within the statutory framework provided thereunder."

12- In view of above, petitioner has not been able to make out a case for grant of post-arrest bail at this stage. Consequently, captioned criminal misc. is accordingly **dismissed.**

13- The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//