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

Crl. Misc. No.476-B of 2022

Hashmat Hussain

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.
	13.05.2022	Petitioner in person with Raja Muhammad Yamin Abbasi, Advocate. Ms. Nazia Imran, Advocate for complainant. Syed Shahbaz Shah, State counsel along with Raees SI.

Through the instant Crl. Misc., petitioner *(Hashmat Hussain*) is seeking pre-arrest bail in cross version of crime reported in FIR No.169, dated 17.02.2022, under Section 337-F(ii)/34 PPC registered with P.S, Khanna, Islamabad.

2. According to the allegations, set-forth in the F.I.R, on 09.02.2022 at about 12:30 p.m. within the area of village Sohan when complainant along with one Nawar Afzal and his son Hassan Abbas was present over there, petitioner allegedly launched an attack upon the complainant with knife, due to which the latter sustained injury on his hand. According to the allegation, the petitioner was accompanied by his friend Hijab Hussain and while leaving also extended life threats.

3. The learned counsel for the petitioner argued that the very registration of instant FIR is counterblast to the FIR got registered by the petitioner; that there is inordinate delay in lodging the FIR; that none of the offences alleged falls within the ambit of prohibitory clause of Section 497 Cr.P.C.; that the allegations on the face of it warrant further inquiry, therefore, petitioner is entitled to the concession of pre-arrest bail. Learned counsel relied upon case law reported as 2013 YLR 958 and 2017 YLR 991.

4. On the other hand learned State counsel assisted by learned counsel for the complainant repelled the above submissions by contending that petitioner is specifically nominated in the FIR with specific role of causing sharp edged weapon injury, that recovery is yet to be effected and that in the FIR got registered by the petitioner, the complainant has already been declared innocent, therefore, the petitioner is not entitled to extra ordinary concession of pre arrest bail.

5. Learned State Counsel added that the extra ordinary discretion could not be extended in absence of *malafide* or malice on the part of complainant or police. Reliance has been placed upon case law reported as 2016 SCMR 2064, 2005 P.Cr.L.J 654, 2006 MLD 916 and 2022 MLD 744.

6. Arguments heard, record perused.

7. The Hon'ble apex Court in the case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another"*** **(PLD 2021 Supreme Court 708)** has graciously held that:-

> *"the power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of* ***liberty, dignity, due process and fair trial****. Pre-arrest bail is in the nature of a check on the police power to arrest a person.* ***The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail****, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining* ***whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct****, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for*

> *believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part."*

8. The ratio set in the case of ***Shahzada Qaiser Arfat supra*** guides to holds that if there is non-availability of incriminating material against an accused, his implication by the complainant or the persistence of the police to arrest him, would be construed as the circumstances, which by themselves indicate *malafide* on the part of the complainant or the police and in that eventuality, an accused need not to lead any evidence to substantiate the malice or *malafide* on part of the complainant or the police.

9. According to the ratio, the opinion of the Court while deciding pre-arrest bail petition of an accused should be based on some solid material, collected during the course of the investigation and not on surmises or conjectures. It has also been graciously held that in case of non-availability of direct evidence, the police must collect such circumstantial evidence during investigation from which a court could draw a legitimate inference of the existence of conspiracy and involvement of the accused in the conspiracy.

10. The existence of solid/incriminating material which could be made basis to draw a legitimate inference about involvement of an accused in the commission of the alleged offence would, therefore, be mandatory.

11. On the touchstone of the principle laid down in the case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another*" (PLD 2021 Supreme Court 708)**, the record of the instant case reveals that there is significant flaw in the statement of eye-witnesses and the version set-forth by the complainant. As per the stance of the complainant, the petitioner while armed with knife launched an attack and caused an injury on the hands of the complainant while the witnesses namely Nawar Afzal and son of the complainant namely Hassan Abbas in their respective

statements recorded under Section 161 Cr.P.C did not name the petitioner to be equipped with knife and causing of its blow at the hand of the complainant rather they asserted that a scuffle had taken place between the petitioner and the complainant and that they intervene and got them separated.

12. In addition, there is no denial of the fact that the petitioner also lodged an FIR against the complainant regarding the same day happening while there is no justification as to the delay of receipt of Medico Legal Report on 16.02.2022 respecting an examination dated 09.02.2022 of about 4/8:00 p.m.

13. The alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C wherein grant of bail is a rule and refusal is an exception. Reliance is placed upon case of *"Muhammad Ramzan alias Jan v. The State and others"* **(2020 SCMR 717)**.

14. Having examined the case, on tentative assessment of the material placed on record, it is concluded that petitioner has succeeded to make out a case for exercise of extra ordinary discretion of pre-arrest bail for reasons enumerated above. Consequently, instant criminal miscellaneous is allowed. Ad-interim pre-arrest bail already granted to the petitioner vide order dated 19.04.2022 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

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

(ARBAB MUHAMMAD TAHIR)
JUDGE

***A.R. Ansari ***