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

Criminal Misc. No. 732-B of 2022

Zaafir Ali.

Versus

The SHO, P.S Lohi Bheer, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	14.06.2022	Mr. Imran Fazal, Advocate for petitioner. Mr. Shahid Kamal Khan, Malik Khalid Ahmed & Waleed Saeed Sheikh, Advocates for respondents. Mr. Zain Qureshi, State counsel. Fakhar Abbasi, S.I.

Through the instant criminal misc., the petitioner prays for Pre-arrest bail in FIR No. 441 dated 12.04.2022, under Section 302/34 PPC, registered with Police station Lohi Bher, Islamabad.

2. The instant FIR was registered on the written complaint of Tanveer Akhtar, who has nominated the present petitioner in the crime. The perusal of the FIR would reveal that the petitioner is specifically nominated in the FIR with the allegations that the petitioner while sharing common intention with his co-accused Israr Hussain and Mashad, made firing upon the complainant and on one Imitaz Ali.

3. The learned counsel for the petitioner stated that the petitioner is a juvenile and that as per section 6 (2) of the Justice Juvenile Justice System Act, 2018 (JJSA), petitioner is entitled to be extended the extra ordinary relief of pre-arrest bail; that the petitioner is attributed only role of ineffective firing at the utmost; that the petitioner has joined the investigation and is no more required for further investigation; that the complainant has thrown a wider net by involving all the family members of the petitioner;

that it is not appealable to a prudent mind the presence of the complainant at the place of occurrence and while his son being shot by the co-accused but the complainant is not playing any role; that the story narrated by the complainant in the instant FIR is an afterthought as the incident was reported to the police with a delay; that even otherwise, there is no motive attributed to the petitioner. The learned counsel for the petitioner has relied upon case law reported as ***2022 SCMR 264, 2021 PCr.LJ 1050, 2012 PCr.LJ 430, 2021 SCMR 63, 2022 MLD 459, 2019 MLD 1689, 1998 SCMR 454.***

4. The learned State Counsel assisted by the counsel for the respondent/complainant faithfully contested the bail application and argued that the petitioner is saddled with sharing of common intention and the matter has not been investigated by the I.O of the case as the petitioner has remained on bail before arrest since the lodgment of FIR; that two kind of empties were recovered from the crime scene, which strengthens the story of the prosecution as narrated in the FIR; that the benefit under section 6(2) JJSA, 2018 cannot be extended to the petitioner as the section provides that if the offender is nominated in an offence which entails capital punishment he cannot be granted such a relief.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the petitioner is nominated in the FIR with the allegations of firing upon the complainant and the eyewitness. The perusal of the record reveals that two kind of weapon were used in the commission of the alleged offence as two sets of empties were recovered from the place of occurrence and the I.O of the case is asking for the custody of the petitioner as he has not joined the investigation after seeking interim pre-arrest bail from this Court.

The record would further reveal that the co-accused Mashad Ali who has surrendered before the I.O. on 20.05.2022 along with the crime weapon and Motorcycle used in the alleged offence. The record is further indicative of the fact that 3 empties of 9mm pistol and 2 empties of .30 bore pistols were collected from the crime scene. The .30 bore pistol has been recovered from the co-accused Mashad Ali while the recovery of the .9mm pistol is yet to be effected from the accused.

7. Keeping in view the alleged offence and the dictum laid down by the Hon'ble Apex Court while dealing with a bail before arrest in an offence which entails capital punishment, the Court has to be vigilant enough of the fact that the investigation should not be hampered by way of extending extra ordinary relief of bail before arrest to an accused.

8. 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 of any one 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**).

9. 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)**.

10. Reliance is placed upon case law reported as ***Muhammad Ismail v. The State*** **(2022 SCMR 707),** wherein it was held that *"for effective administration of criminal justice, it was most important that prosecution was allowed a meaningful opportunity to carry out and conclude the investigative process, as apart from readily available evidence in the aftermath of an incident, it may find incriminatory material that may possibly become available pursuant to disclosures in custody."* Reliance is also placed upon case law reported as ***Ghulam Qadir v. The State*** **(2022 SCMR 750)**, wherein it was graciously held that *"even otherwise, in the absence of any apparent malafide on part of the complainant or the local police, the accused could not claim extra ordinary/equitable concession of pre-arrest bail in a criminal case*"

11. In view of above, instant bail petition is **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//