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

Criminal Misc. No.1248-B of 2022

Muhammad Osama
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.
	26.10.2022	Mr. Adil Aziz Qazi, Advocate for petitioner. Syed Ali Raza Kazmi, Advocate for respondent. Mian Zain Qurshi, State Counsel. Naveed.S.I. with record.

ARBAB MUHAMMAD TAHIR J: This is second post-arrest bail by petitioner/accused namely *Muhammad Osama* in FIR No. 578, dated 07.11.2021, Under Section 302/34 PPC, PS Lohi Bher, Islamabad.

2- The first post-arrest bail petition of the petitioner and co-accused namely Muhammad Saboor were dismissed by this Court vide order dated 02.02.2022. The petitioner then filed second post-arrest bail petition on principle of consistency being his case at par with co-accused Muhammad Shahbaz, who was granted post-arrest bail by the Hon'ble Apex Court vide order dated 22.08.2022, passed in Crl. Petition No. 700/2022, which was dismissed by the learned ASJ-IV Islamabad East vide order dated 17.09.2022, hence this second post-arrest bail petition.

3. According to the allegations set-forth in the FIR, on 07.11.2021 at about 05:00 pm, co-accused Saboor and the *petitioner (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 Muhammad Shahbaz resident of Dhoke Chaudhrian (*since admitted to post arrest bail)*. 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 the *petitioner Osama*, who informed about a quarrel, sustaining injury and death of Sheraz.

4. The learned counsel pressed this petition on the ground that no incriminating material is surfaced against the petitioner during the course of investigation and that his role is identical to that of co-accused Muhammad Shahbaz who was allowed bail by the Hon'ble Apex Court vide order dated 22.08.2022 passed in Crl. Petition No. 700/2022.

5. On the other hand, learned State Counsel assisted by the learned counsel for the complainant repelled the above submissions by arguing that sufficient incriminating material is available on record against the petitioner who is nominated in the FIR and his active participation is also floating on the record, therefore, petition is liable to be dismissed.

6. Heard the learned counsel for the petitioner, learned State Counsel, learned counsel for the complainant and gone through the record.

7. The first post-arrest bail petition of the petitioner was dismissed by this Court vide order dated 02.02.2022 passed in Crl. Misc 1406-B/2021 by observing as under:-

> 10- In the present, it is evident from the record that both the petitioners are nominated in the FIR with specific role of taking away the deceased from his house, duly witnessed by the complainant and his brother Ashiq Hussain, who were present in the house at the relevant time. Reliance is placed upon case titled as *Muhammad Imran v. The State & others* **(2016 SCMR 1401)**
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> 11- From the crime scene, police collected blood stained dagger. Video recording was also taken in possession through USB that comprised of footage regarding shifting of the deceased to the hospital. Prior to this, on 09.11.2021 police also took into possession call data record-CDR of the deceased and the petitioners.
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> 12- Record further reveals that one of the witnesses Mst. Rehana Bibi in her statement has given the details of quarrel that took place between the petitioners and the deceased few days before the occurrence. The witness Jawad in his statement asserted to have made telephonic call on cell phone

> number of his deceased brother which was responded by petitioner Osama.
> 13- The evidence of last seen is also available on record in the shape of statement of one Muhammad Waheed, who witnessed the deceased in the company of petitioners on the fateful day at about 7:30 p.m. near bricklin, outside the gate of Navel Anchorage.
> 14- The recovery of cell phone of the deceased Sheraz is allegedly attributed to petitioner Osama, as one of his relatives Muhammad Ashfaq produced the same before the Police while there is also allegation of use of his motor-cycle in commission of alleged offence.

8. As observed above, the petitioner was held disentitled to the concession of post arrest bail on the basis of tentative examination of the record to the effect that *he is nominated in the FIR with specific role of taking away the deceased from his house duly witnessed by the complainant and his brother Ashiq Hussain who were present in the house at the relevant time*; *the witness Jawad in his statement asserted to have made telephonic call on cell phone number of his deceased brother which was responded by the petitioner Osama*; *PW-Muhammad Waheed witnessed the deceased in the company of the petitioner and co-accused Saboor on the fateful day at about 7:30 pm near bricklin, outside gate of Naval Encourage* and that *the recovery of the cell phone of the decease is also allegedly attributed to the petitioner while there is also allegation of use of his motorcycle in the commission of the alleged offence.*

9. The role of co-accused Muhammad Shahbaz whose bail petition was also dismissed by this Court vide order dated 15.04.2022 passed in Crl. Misc. 345-B/2022 was noted in terms that *the presence of the said petitioner had allegedly been found near the place of the occurrence and that the said petitioner was nominated by the complainant while police has found him guilty during investigation*. On the aspect, the Hon'ble Apex Court graciously observed that:-

> "However, we have been informed that during the course of investigation, it has been found that the petitioner had not made any telephonic call to the co-accused to bring the deceased from his house."

10. The allegation against the co-accused Shahbaz as per the FIR had been to the effect that *the accused persons Saboor and Osama (petitioner) allegedly took away Sheraz Khan deceased with them on the asking of Muhammad Shahbaz accused (since released on bail)*. On the aspect, the Hon'ble Apex Court graciously observed that *during the course of investigation, it had been found that the petitioner had not made any telephonic call to co-accused to bring the deceased from his house*.

11. Unlike the role of co-accused Shahbaz, the petitioner is nominated in the FIR with specific role of taking away the deceased from his house duly witnessed by the complainant and his brother Ashiq Hussain who were present in the house at the relevant time. The witness Jawad in his statement asserted to have made telephonic call on cell phone number of his deceased brother which was responded by the petitioner. PW-Muhammad Waheed witnessed the deceased in the company of the petitioner and co-accused Saboor on the fateful day at about 7:30 pm near bricklin, outside gate of Naval Encourage. The recovery of the cell phone of the decease is also allegedly attributed to the petitioner and that there is also allegation of use of his motorcycle in the commission of the alleged offence.

12. In view of above, the role of the petitioner is quite distinct from the role of co-accused Shahbaz. The ground being pressed to seek post-arrest bail petition on the principle of consistency, is not available to the petitioner. Consequently instant Crl. Misc. is **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//