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

Criminal Misc. No.1199-B of 2023
Muhammad Nadeem
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.
	31.08.2023	M/s Zubair Aslam and Rizwan Gondal Advocates for petitioner, Mr. Tahir Abbasi Advocate for complainant, Mr. Umar Ali Khan, State Counsel with Muhammad Tariq S.I.

ARBAB MUHAMMAD TAHIR,J:Through the instant Criminal Misc., petitioner namely *Muhammad Nadeem*prays for post-arrest bail in FIR No. 367, dated 30.06.2023, Under Section 302,324,109& 34 PPC, registered at Police Station Shahzad Town, Islamabad.

2. The subject FIR stood registered on the statement of *Mubashar Javed,* who allegedly sustained fire-arm injuries during the occurrence and subsequently died in the Hospital. According to the statement of the deceased (then injured) on 28.06.2023, at about 05:30 p.m. when he was heading towards his house on a motorcycle and had been taking turn in a Street from Sidhran Road, intercepted by *Rizwan son of Ejaz Ahmed, Ahmed Yaseen son Muhammad Yaseen*, both armed with pistols riding on a motorcycle while on the second motorcycle, *Hassan son of Muhammad Yaseen*, armed with pistol along with an unknown person also emerged; that *Rizwan Ahmed* by pointing pistol raised *lalkara* to teach lesson to the deceased (then injured) for contracting court marriage with his daughter; that *Ahmed Yaseen* and *Hassan Yaseen* also raised *lalkara* by pointing their pistols to eliminate him (the deceased-then injured); that the latter in order to save his life tried to escape; that

Rizwan Ahmed made a fire-shot which hit the deceased (then injured) on his back while *Ahmed Yaseen* also made a fire shot with his pistol, which hit the deceased (then injured) near his spinal cord upon which he fell down; that *Hasssan Yaseen* made a fire shot but the same proved abortive; that motive of the alleged occurrence is that the deceased (then injured) had contracted court marriage with the daughter of *Rizwan Ejaz* due to which *Tanveer Alam*, ex-husband of his wife extended threats to the deceased (then injured) on various occasions, therefore the accused persons made firing upon with intention to kill him.

3. Learned counsel argued that neither the petitioner is nominated in the FIR nor any overt act is attributed to him; that involvement of the petitioner through supplementary statement with deliberations and consultations retains no legal worth; that no incriminating material connecting the petitioner with the commission the offence under section 109 PPC is available on the record; that case of the petitioner, on the face of it, is one of further inquiry while mere heinousness of offence is no ground to refuse bail; that the petitioner retains no criminal record; that investigation has already been completed and the petitioner is no more required for further probe, therefore, entitled to the concession post-arrest bail at this stage. The learned counsel relied upon case law reported as **2009 P Cr. LJ 612.**

4. On the other hand, learned State Counsel assisted by leaned counsel for the complainant repelled the above submissions. It is asserted that *PW Mudassar Javed* in his supplementary statement nominated the petitioner with role of abetment; that no malice or malafide on the part of complainant or police has been alleged and that the offence alleged is not only heinous but falls within the prohibitory clause of Section 497 Cr.PC therefore, petitioner is not entitled to the concession of bail.

5. Heard, record examined.

6. The petitioner is accused of abetment/conspiracy for the commission of the alleged offence. The Hon'ble Apex Court in the case of "*Shahzada Qaiser Arfat alias Qaiser v. The State*, etc.**(PLD 2021 SC**

708)"graciously observed that "*It is true that a conspiracy to commit a crime by its very nature is usually secret, and cannot be proved by direct evidence in most cases. It, however, does not mean that the prosecution is absolved from its duty to prove the allegation of conspiracy, or that mere allegation of conspiracy is sufficient for holding the accused liable. In case of non-availability of direct evidence, the police must collect during investigation, and the prosecution must lead during trial, such circumstantial evidence from which a court could draw a legitimate interference of the existence of conspiracy and involvement of the accused in that conspiracy."*

7. In the case of ***Shahzada Qaiser Arfat supra***, the Hon'ble Apex Court allowed pre-arrest bail to an accused of abetment/conspiracy in murder case by observing that *"the material available as to the alleged involvement of the present petitioner in hatching alleged conspiracy of committing murder of the deceased persons, so far as the FIR is concerned, is confined to mere allegation of conspiracy /abetment without disclosing any details of such conspiracy/abetment, such as place and time of the alleged conspiracy/abetment and names of the persons who heard such conspiracy/abetment. However, later on the Police recorded statements of certain persons, under Section 161 Cr. PC wherein they have stated that while passing through the Bazar outside the house of the accused persons in the night of 18 and 25 November, 2019, they overheard the accused persons say that they would take revenge of the murder of their brother from Shabbir Hussain. It is not the case of the prosecution that the petitioner was present at the spot or he caused any injury to any deceased or anybody else and in such circumstances there is no chance of any recovery at the instance of the petitioner if he is arrested. All the incriminating material against the petitioner is already with the prosecution.*"

8. For and to constitute offence of abetment or hatching a conspiracy, it is mandatory to disclose the details of such conspiracy or abetment such as its place and time of alleged conspiracy/abetmentbesides names of the persons who heard such conspiracy/abetment. The accusation or for that matter doubt, how strong it may be cannot be termed, or even

looked into as an incriminating material, on the basis of which any legitimate inference with regard to the involvement of an accused in the commission of the alleged offence could be drawn.The disclosure of an accused before the police during the course of investigation without mentioning the details of occurrence and non-collection of any evidence cannot be equated with legitimate incriminating material.

9. On the touchstone of the principle on the subject,record has carefully been perused. The occurrence in the present case allegedly took place on 28.06.2023 at about 05:30 p.m. and in consequence of the alleged attack, *Mubashar Javed* sustained fire arm injuries, shifted to the hospital (PIMS) where he died on 02.07.2023 upon which offence under section 302 PPC was added. In his statement, the deceased (then injured) did not name the petitioner rather the brother of the deceased namely Mudassar Javed in his supplementary statement recorded on 12.07.2023 implicated the petitioner with a role of abetment.

10. Record further reveals that the petitioner was arrested in this case on 21.07.2023, remained on physical remand but no incriminating material whatsoever connecting him with the allegation of conspiracy/abetment has come on record. There is mere an allegation of consultations and deliberations with accused persons who are closely related to the petitioner. There are no details of abetment like date and time of the alleged abetment/conspiracy.

11. Furthermore, the petitioner allegedly disclosed during the course of investigationthathe is closely related with accused persons and used to consult them in connection with present case and accused persons also asked him to pursue the case. There are no details of any conspiracy/consultation regarding commission of the present occurrence. The statement so made by the petitioner cannot be made basis to draw inference regarding abetment or conspiracy inter-se the petitioner and co-accused. Neither the complainant in his supplementary statement has given thedetails of alleged conspiracy or abetment nor is any incriminating material available on record.

Therefore it can safely be held that case of the petitioner squarely falls within the ambit of further inquiry.

12. 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 the grant of post arrest bail for reasons enumerated above. Consequently, instant criminal miscellaneous is **allowed** and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

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

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR Ansari