ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl.Misc.No.44-B of 2014
Hayat Khan
Vs.
The State

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.02.2014	Syed Asghar Ali Sherazi, Advocate. Mr. Zahoor Akhtar Awan, learned Standing Counsel with Ajmal SI. Mr. Wajid Ali Gillani, Advocate for respondent No.2.

O R D E R
MUHAMMAD ANWAR KHAN KASI, CJ:

Petitioner [Hayat Khan] prays for post-arrest bail in case FIR No.416, dated 11.09.2013, under Sections 302, 148/149 PPC at Police Station Tarnol, Islamabad, after its rejection from the Court of learned ASJ-VI (Wast), Islamabad, vide order dated 19.11.2013.

2. Learned counsel submits that petitioner has been maliciously roped in this case with malafide intention and for ulterior motives by the complainant in order to harass, humiliate & pressurize the petitioner, while factually petitioner is addict of heroine and co-accused Tariq & Naeem Shah were also his companions in the habit of addiction and they used to purchase heroin from Basharat & Tanvir. They contacted Basharat & Tanvir for purchase of 200 grams heroin and settled the place of delivery as Street No.50, Multi Professional Housing Society F-17, Markaz, Islamabad. Upon reaching there and after checking of heroin, petitioner paid the amount of Rs.56,000/- as per settlement.

3. In the meanwhile, Muhammad Ramzan ASI and Naeem Shah Constable came there and tried to arrest Tanvir & Basharat, but they avoided arrest, by making hue and cry and grappled Tanvir, whereafter, Tanvir made aerial firing from his pistol towards Doray Village and one of the bullets hit the body of Nadeem Gul, who got injured and his brother took him to PIMS hospital, where he succumbed to the injuries. When the news of death of Nadeem Gul reached the Village, persons of the vicinity armed with different weapons,

came at the spot and captured the petitioner alongwith Muhammad Ramzan ASI and Ansar Abbas Constable, whereafter, local persons confined the petitioner in one room, while other two police officials in another room of a 'Havailey' known as "Zainab Havailey" where they were tortured & resultantly Muhammad Ramzan ASI & Ansar Abbas Constable died, while the petitioner was badly injured and became unconscious. Later on, local police came at the spot, recovered the petitioner in an unconscious condition shifted him to PIMS for medical treatment. The dead bodies of the police officials were also recovered from the Zainab Havailey and thereafter, the local police registered the case FIR No.417, dated 11.9.2013 for offence under Sections 302,324,148,149 & 342 PPC with Police Station Tarnol.

4. After that a judicial inquiry was conducted and Mr. Frasat Ali Khan, District Magistrate was appointed as Inquiry Officer, who inspected the spot and after recording the statement of local persons of the vicinity, police officials, security guards of Housing Society and perusing the record of Police Station Tarnol, submitted his detailed report, wherein no role has been attributed to the petitioner regarding the murder of Nadeem Gul [deceased] rather the petitioner was shown as purchaser of narcotics while according to said inquiry Nadeem Gul is found to have been murdered by the bullet fired by Tanvir.

5. It is further submitted that eye witnesses have attributed firing to Tariq and Naeem Shah only, whereas during the investigation allegation respecting dacoity has not been found correct. No overt role of effective firing has been attributed to him. Moreover, empties of .30 & 9mm caliber were recovered from the spot, whereas the alleged recovery shown by the police is of .22 bore pistol, which makes the case of the prosecution as one of further inquiry. It is also added that case of co-accused [Khan Azam] is on distinct parameters as allegation against him is of double murder and rejection of his bail cannot be considered in the case of the petitioner.

6. In support of his arguments, learned counsel relied upon case laws titled as Muhammad Saleem V. The State [PLD 1989 Lahore 233] & Muhammad Nawaz V. The State [2007 P.Cr.L.J 1049].

7. On the other hand, learned Standing Counsel, assisted by learned counsel for the complainant, resisted the bail petition by stating that the arguments on behalf of petitioner require deeper appreciation of evidence, which is not warranted at bail stage. The FIR has been registered without delay. Eye witnesses implicated the present petitioner with role of firing. The pistol recovered from him was given to the fleeing co-accused. His role is on higher pedestal as compared to co-accused Naeem Shah & Khan Azam, whose bail has already been declined by this Court. It is also added that there is no previous enmity, accused/petitioner was apprehended at the spot and people of the vicinity present over there also supported the stance of the prosecution. It is further added that the vehicle, allegedly used in the commission of crime, belongs to the accused/petitioner, therefore, in presence of sufficient material, he is not entitled to the concession of bail. Reliance was placed on case laws titled as Khair Muhammad & another V. The State [2010 MLD 1827], Muhammad Abbasi V. The State & another [2011 SCMR 1606], Muhammad Rameez V. The State & another [2013 YLR 968], Faiz Muhammad v. Zaibul Nisa & another [2009 MLD 518], Sardar Khan V. The State [2013 P.Cr.L.J 816], Soofan alias TahirV. The State [2009 P.Cr.L.J 540], Mamaras V. The State & others [PLD 2009 Supreme Court 385], Rashid V. The State [2010 P.Cr.L.J 337], Muhammad Waseem Nawaz V. The State [2002 SCMR 1279], Muhammad Abbasi V. The State [2011 SCMR 1606], Feroz V. The State [2004 P.Cr.L.J 17], Muhammad Imran & others V. The State [2008 P.Cr.L.J 1555] & Khan Azam V. The State etc [Crl. Misc.No.677-B of 2013, Islamabad High Court].

8. Heard & record perused.

9. Brief facts of the case are that on 10.9.2013 at about 10:00 p.m. the complainant, on hearing report of hue & cry, came out of the house, alongwith his brother [deceased Nadeem Gul], and went to nearby housing society where 5/6 dacoits, armed with firearm weapons, were standing near the black colour vehicle. Upon seeing the people of the vicinity, two of them attempted to flee in the said vehicle, whereas the remaining opened fire, which resulted in the death of Nadeem Gul.

10. Perusal of record shows that petitioner was arrested at the spot in an injured condition and later, he was implicated by the witnesses namely, Muhammad Khan & Irfan in their statements under Sections 161 Cr.P.C with regard to commission of alleged offence. Mere possibility of lesser role than the one alleged against the accused/petitioner cannot make the case as one of further inquiry. Though, *ipsi dixit* of police is not binding, yet the investigation or the inquiry conducted by learned District Magistrate cannot be discarded outrightly. The role of accused/petitioner is in no way lesser than of co-accused Naeem Shah, whose bail has already been dismissed by this Court. Furthermore, previous enmity or malice/malafide has not been attributed to the complainant or police which disentitles the petitioner from extra ordinary concession of bail in case involving heinous offence of murder. The case laws relied upon by learned counsel do not extend any help to the petitioner due to having distinct facts & circumstances. The observations recorded hereinabove are tentative in nature and shall not prejudice the case of either party.

11. For the foregoing reasons, the bail petition being meritless, is dismissed.

(CHIEF JUSTICE)

Qamar Khan*