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

Crl. Misc.No.748-B of 2013.
Qaiser
Vs.
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.
	02.1.2014	Ch. Khalid Hussain, Advocate for petitioner, Mr. Sana Ullah Zahid, learned Deputy Attorney-General with Raja Aamir Abbas, learned ASC for complainant, Mumtaz Baig ASI with record.

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

Petitioner [Qaiser] prays for post-arrest bail in case FIR No.297, dated 04.7.2013, registered under Sections 302, 109, 148 & 149 PPC at Police Station Industrial Area, Islamabad, after its rejection from the Court of learned Additional Sessions Judge-VIII (West), Islamabad, vide order dated 29.10.2013.

2. Learned counsel submits that there is a delay of about two & a half hours in lodging the FIR, which creates doubt of deliberations and consultations as the distance inter se the place of occurrence and police station is hardly 2.5 kilometers. He further argued that petitioner has not been assigned any specific role except driving the vehicle, allegedly used during the occurrence. There is also no mention of its registration number in the FIR, which reflects that the complainant has thrown a wider net to implicate more and more persons.

3. Learned counsel also emphasized that the petitioner remained on physical remand for ten days, but nothing incriminating has been recovered from his possession and the alleged recovery of vehicle has no connection with him. According to learned counsel, at the most, it is a case of vicarious liability, which will be determined after recording the evidence.

4. He further argued that five co-accused of this case, who were involved under Section 109 PPC with role of abettors, have already been declared innocent by the police, therefore, the case to the extent of present petitioner is also one of further inquiry.

5. It is next submitted that mobile call data of the complainant shows his presence at Gujrat and, therefore, his

presence at the scene of crime at relevant time is illogical and reflects that it was an unseen occurrence.

6. Learned counsel lastly argued that there is a long standing enmity between the parties due to which he got registered the case against the petitioner. In fact, the complainant is a habitual litigant, who has lodged several FIRs against the accused party. In support of his contentions, learned counsel referred case law titled as Manzoor Hussain V. The State 2011 SCMR 902, wherein it is held that bail could not be refused on the basis of vicarious liability unless the accused were shown through positive evidence to have played a role in the crime.

7. On the other hand, learned Deputy Attorney-General, assisted by learned counsel for the complainant, repelled the above arguments by submitting that the petitioner is specifically nominated with a vital role of driving the vehicle, which is used during the commission of alleged offence, therefore, he is not entitled to any leniency.

8. It is also contended that there is a short delay of one hour in lodging the FIR, which is natural in the given circumstances. The role assigned to the petitioner prima facie, shows his active connivance with his co-accused as he brought all of them to the place of occurrence with lethal weapons, which were recovered from the trunk of the said vehicle.

9. Learned counsel for the complainant further argued that there is no chance of false accusation as it is a case, wherein an innocent person hailing from low-caste has become victim of feudal mindset.

10. He further submitted that call data being referred by the learned counsel for the petitioner does not show complainant's presence at Gujrat as it reflects only the presence of mobile phone at Gujrat and not the complainant himself. On getting information respecting conspiracy of the alleged offence, the deceased sent applications to authorities including the Human Right Cell of the Hon'ble Supreme Court of Pakistan, whereby threat to his life had been voiced. The petitioner, nowhere, denied his presence at the place of occurrence. He admitted his vicarious liability and the motive of previous enmity, without thorough probe, cannot be used against any of the parties due to its status as of a double edged weapon. Reliance was placed on case law titled as Arshad V. The State [2012 P.Cr.L.J 1749].

11. Heard & record perused.

12. According to prosecution, on 4.7.2013, at about 9.00 pm in I-8/4, PS Industrial Area Islamabad, accused party including Nisar, Sarfraz armed with 30 bore pistols and Muhammad Ashraf armed with Carbine, while one Innayat and four others armed with lethal weapons launched an attack upon the complainant and his brother Ghulam Raza due to which the latter sustained injuries and subsequently expired in the hospital.

13. The petitioner is nominated in the FIR with specific role of driving the vehicle which had been used during the occurrence. The PWs in their statements under Section 161 Cr.P.C. also implicated him. During investigation, he was also found involved in the commission of alleged offence.

14. It is not a case of offence committed under sudden provocation or fight without any pre-planned concern or object. Though the question of common intention or pre-concert has been considered in some cases as ground of further inquiry, yet there is no hard and fast rule or settled principle of law that question of common intention be taken into consideration, while deciding the bail application as every case is to be decided on the basis of its own fact and circumstances. The case law relied upon by the learned counsel for the petitioner is distinguishable to the facts and circumstances of the present case.

15. In view of above, the tentative assessment lead to the conclusion that the petitioner is not entitled to the concession of bail. The bail application is, therefore, dismissed.

(CHIEF JUSTICE)

M.Suhail*