

ORDER SHEET

**IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN
(JUDICIAL DEPARTMENT)**

Case No. Crl. Misc. No.1321-B/2017

Habib Ullah

Versus

The State etc.

Sr. No. of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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05.04.2017

Ch. Faqir Muhammad, Advocate for the petitioner.
Sardar Mehboob, Advocate for the complainant.
Mr. Muhammad Ali Shahab, Deputy Prosecutor General
alongwith Ibrahim, ASI.

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Through instant petition under Section 497 Cr.P.C., petitioner Habib Ullah has sought post arrest bail in case FIR No.231 dated 16.07.2011, in respect of offences under Sections 302, 324, 109 and 34 PPC, registered at Police Station, Civil Line, Dera Ghazi Khan.

2. Allegedly, on 16.07.2011 at about 5:00 p.m., the petitioner while armed with semi-automatic rifle alongwith his co-accused armed with firearms, in furtherance of their common intention, fired upon the complainant party, when they were going on their motorcycles from Ronghan to their house, which hit Zeru Khan and Abdul Ghaffar on their back. Zeru Khan succumbed to the injuries at the spot whereas injured Abdul Ghaffar was in critical condition. Hence, this case was registered.

3. I have heard learned counsel for the petitioner, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant and perused the record.

4. Bare perusal of the crime report shows that the petitioner alongwith his co-accused had been saddled with the responsibility of jointly making

four fire shots, out of which three fire shots had hit on the back of deceased Zeru Khan and one fire shot had hit on the back of injured Abdul Ghaffar whereas according the post mortem examination of the deceased, there were two firearm entry wounds on his back and as per Medico-legal Certification of the injured P.W., there was one firearm injury on his back. I have observed difference in number of injuries on the person of the deceased as claimed by the complainant in the crime report and that of the injuries observed by the medical expert at the time of post mortem examination of the deceased which *prima facie* indicates that the same might have been attributed to equalize with number of the accused persons. The complainant's claim is that four accused persons had committed firing with their respective firearm weapons whereas the deceased and the injured P.W. had received total three fire shots, thus, it is not possible at this stage to specify as to which of the accused persons had not made firing. Almost a similar question has been settled by this court in a case titled "MUHAMMAD SHAHID and another versus THE STATE" (PLD 2007 Lahore 633). The relevant portion is hereby reproduced for ready reference:-

"It has also been observed by me that according to the F.I.R. all the four culprits, including the present petitioners, had participated in causing of injuries to Muhammad Naeem P.W. but the Medico-legal Certificate pertaining to the injuries sustained by Muhammad Naeem P.W. clearly shows that the said victim had sustained only three injuries on his body. It is, thus, evident that one of the four culprits had not caused any injury to the said victim and it is not decipherable from the entire record as to who was that person out of the four culprits who had not caused any injury to the said victim."

5. It has been argued vehemently that the petitioner remained fugitive from law for a period of five years, therefore, he is not entitled to any discretionary relief. The question has already been settled by august Supreme Court of Pakistan that bail cannot be withheld mere on account of

his abscondance provided the same otherwise calls for further inquiry into his guilt. I seek guidance in this respect from a case titled “QAMAR alias MITHO versus THE STATE and others” (PLD 2012 Supreme Court 222)”.

6. The petitioner was arrested in this case on 18.06.2016 and he is behind the bars since his arrest without any substantial progress in conclusion of the trial. In the commending circumstances, case against the petitioner calls for further inquiry into his guilt within the purview of Subsection (2) of Section 497 Cr.P.C.

In view of above, the petition in hand is **allowed** and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of **Rs.500,000/-** (rupees five lac) with two sureties in the like amount to the satisfaction of the trial Court.

(Asjad Javaid Ghural)
Judge

APPROVED FOR REPORTING.

JUDGE

*Asif**