

Form No:HCJD/C-121

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH RAWALPINDI**  
**JUDICIAL DEPARTMENT**

**Case No Crl. Misc.No. 533-BC of 2017**

Javed Iqbal

Vs

Imtiaz Ahmad & another

S.No. of order/proceeding	Date of order/Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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13.06.2017

Mr. Muhammad Asif Choudhry, Advocate for petitioner.  
Mr. Qaisar Mushtaq, ADPP with Shakil, SI.  
Raja Muhammad Hameed, Advocate for respondent No.1.

Impugned herein is order dated 17-2-2017 whereby a learned Addl. Sessions Judge at Rawalpindi admitted Imtiaz Ahmad respondent to bail in anticipation of his arrest in a case of homicide registered way back on 7-6-2008 vide FIR No.102 with Police Station Chontra District Rawalpindi on the statement of Javed Iqbal, alleged wherein is that on the fateful day, he while being armed with a rifle accompanied by his co-accused, shot Tariq Iqbal deceased on his right flank; after a brief struggle, the deceased succumbed to the injury. Respondent remained away from law and subsequent thereto secured ad interim pre-arrest bail as late as on 17-1-2017, confirmed vide the impugned order, on the following ground:-

*“Although the petitioner is nominated in FIR but during course of investigation no incriminating material was found against the present petitioner. Only the allegation against the petitioner is of ineffective firing which makes the case of present petitioner is one of further inquiry and probe.”*

2. Heard. Record perused.
3. Argument that the impugned order is premised upon a factually incorrect assumption is not beside the mark for the

reason that a bare reading of First Information Report, an exercise, seemingly omitted by the learned Addl. Sessions Judge, clearly indicates an effective fire shot by respondent No.1, landing on right flank of the deceased, subsequently resulting into his death and it is so illustrated not only by the complainant but no less than two eye witnesses, namely, Nadeem Abbas and Ghulam Abbas in their statements of even date, as well. The narrative is duly corroborated by medico legal certificate as well as autopsy report and, thus, there was no occasion for the learned Addl. Sessions Judge to hold that *no incriminating material was available against the petitioner*. A clear motive was additionally suggested in the crime report, besides inordinate absence of almost nine years from law hovering upon the respondent. Extravagance extended to the respondent cannot be condoned on the ground that a report under Section 173 of the Code of Criminal Procedure, 1898 has since been submitted or that recall of interlocutory freedom of bail is subject to same considerations, parimateria with grounds for interference with acquittal, as subsequent events or mere flux of time would not validate an order inherently ultra vires.

Eversince the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), considerations for grant of bail in anticipation of arrest have clearly been defined/spelt out; it is diversion of usual course of law, arrest in cognizable cases; judicial protection essentially to be extended to ward off penal consequences in cases initiated under abuse of process of law or malafide, elements conspicuously missing reference in the impugned order arising out of a run of the mill criminal case. In the case of Mukhtar Ahmad Vs. The State & others (2016 SCMR 2064), the above view has been vigourously reaffirmed once again, relevant portion whereof is advantageously reproced as follows:-

*“Concession of pre-arrest bail could not be allowed to an accused person unless the court felt satisfied about seriousness of the accused’s assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local police.”*

The impugned order is not only inconsistent with the above declaration of law, it is incompatible with the facts of the case as well and, thus, cannot sustain. Consequently, Crl. Misc. No.533-BC of 2017 is allowed; pre-arrest bail granted to respondent No.1 is cancelled.

***(Qazi Muhammad Amin Ahmed)***  
***Judge***

***Approved for Reporting***