

ORDER SHEET**LAHORE HIGH COURT, LAHORE.****JUDICIAL DEPARTMENT**

Criminal Miscellaneous No.60067-B of 2017

*Abdullah and 3 others**Petitioners**versus**The State and another**Respondents*

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties, counsel, where necessary
03)	24.10.2017	Mr. Liaqat Ali Malik, Advocate with the petitioners in person Mr.Irfan Zia, Deputy Prosecutor General for the State and Shabbir SI with record Mr. Sajid Latif Shahzad, Advocate for the complainant

Through this petition under section 498 Cr.P.C. the petitioners have sought pre-arrest bail in case FIR No.304/17, dated 01.07.2017 registered at Police Station Bhowana, District Chiniot in respect of offences under sections 302, 324, 337A(i), 337A(ii), 337F(i), 337L(2), 447/511, 337H(2), 148, 149 PPC.

2. I have heard the learned counsel for the parties and have gone through the record with their able assistance. This is bail before arrest and only tentative assessment is required at this stage. It has been noticed by this Court that although petitioners are named in FIR, yet the fact remains that there is a delay of three days in registration of FIR, which has not been explained by the complainant, which *prima facie* reflects that the FIR has been got registered after due deliberation and consultation. Bare reading of the FIR shows that no specific role has been assigned to Riaz petitioner and only a joint allegation of making aerial

firing alongwith co-accused is leveled against him. Similarly Abdullah petitioner has also been assigned joint role of making aerial firing alongwith co-accused Ijaz, which attracts provisions of section 337H(2) PPC and is a bailable offence. As far as Noor Ahmad and Fayyaz petitioners are concerned, Noor Ahmad petitioner has been assigned the role of inflicting “sota” blows on the back of Mansabdar injured and according to medico legal certificate of the injured, multiple contused swelling observed by the doctor on the back of his chest attracts section 337L(2) PPC, which too is a bailable offence. Like-wise, Fayyaz petitioner has been assigned the role of inflicting sota blows on right and left wrists of Saddam Haider injured, but according to medico legal certificate of the injured only a contused swelling was observed by the doctor on left wrist of Saddam Haider injured, whereas no injury on right wrist could be observed during his medical examination. According to medico legal certificate of Saddam Haider injured, the injury attributed to Fayyaz petitioner on left wrist of Saddam Haider injured has also been declared by the doctor as 337L(2) PPC, which as stated above is a bailable offence. Besides, none of the petitioners has caused any injury to Malik Khan deceased, therefore, questions of sharing common intention in furtherance of common object with co-accused for committing murder of Malik Khan deceased and vicarious liability of the petitioners shall be determined by learned trial court after recording evidence. Reliance can be placed on the case of “Mumtaz Hussain vs. The State” (1996 SCMR 1125). Apart from the above, co-accused Ahmad alias Ahma has filed a petition under section 22-A, 22-B, Cr.P.C. before learned *Ex-officio* Justice

of Peace, maintaining therein that accused Umar Daraz, Sarfraz alongwith Mst. Nooran and Mst.Bakhat Bibi also sustained injuries during the incident and learned Ex-officio Justice of Peace has directed the investigating officer of case to record version of the accused *vide* order dated 09.08.2017, but the investigating officer has not so far recorded cross-version of the accused/petitioners' side. The fact that Umar Daraz, Sarfraz, Mst. Nooran and Mst.Bakhat Bibi from petitioners' side also sustained injuries during the incident has been suppressed by the complainant in FIR. As both the parties received injuries during the incident, the question as to who is aggressor and who has been aggressed upon shall be determined by the learned trial court after recording evidence. Moreover, it has come on the surface of record during the course of investigation that Abdullah and Fayyaz petitioners were merely present at the spot while they were empty handed, whereas Riaz petitioner did not take part in the alleged incident and this fact *prima facie* creates doubt in the story of FIR to the extent of present petitioners. It is settled law that the benefit of doubt can be extended in favour of accused even at bail stage. In view of the allegations contained in FIR and the facts emerged during the course of investigation, *prima facie* the case to the extent of present petitioners has become a case of two versions; one put forward by the complainant in FIR and the other came on record during investigation and which version is correct shall be determined by learned trial court after recording evidence. Reliance can be placed upon "Ehsan Ullah vs. The State" (2012 SCMR 1137) and "Zaigham Ashraf vs. State, etc." (PLJ 2016 SC 14). There is a dispute of property

between the parties and civil litigation is also pending between them, so keeping in view the nature of allegations leveled against the petitioners and the roles assigned to them in the commission of alleged incident, possibility of false implication of the petitioners by the complainant by spreading the net wide cannot be ruled out of consideration. Admittedly the petitioners are previous non-convict; they have already joined the investigation and according to the investigating officer, the investigation of the case to the extent of present petitioners is complete, therefore, no useful purpose would be served by sending them behind the bars so as to enable them to come out of jail on post-arrest bail after few days.

3. For what has been discussed above, false implication of the petitioners by the complainant by spreading the net wide cannot be ruled out of consideration, hence, this petition is allowed and the ad interim pre-arrest bail already granted to the petitioners *vide* this Court's order dated 15.08.2017 is hereby confirmed subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) each, with two sureties, each in the like amount to the satisfaction of learned trial court.

4. The observations made above are tentative in nature and are strictly confined to the decision of this bail petition only.

(Abdul Sami Khan)
Judge

APPROVED FOR REPORTING.

(Abdul Sami Khan)
Judge