

Form No: HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Miscellaneous No.60798-B of 2017

Muhammad Shoaib and 2 others

Petitioners

versus

The State and another

Respondents

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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27.01.2017	Ch. Muhammad Ashraf Goraya and Ch. Umar Hayyat Kamran Rajoka, Advocates with the petitioners in Cr.M.No.60798-B of 2017 and Cr.M.No.61148-B of 2017 Mr. Irfan Zia, Deputy Prosecutor General for the State and M.Iqbal ASI with record Mr. Naveed Ahmad Khawaja, Advocate for the complainant
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Through this single order, I propose to decide the instant petition along with Criminal Miscellaneous No.61148-B of 2017 as in both these petitions, Muhammad Shoaib, Muhammad Zubair, Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners have sought pre-arrest bail under section 498 Cr.P.C. in case FIR No.183/17, dated 04.06.2017 registered at Police Station Bhagtanwala, District Sargodha, in respect of offences under sections 337A(i), 337A(ii), 337A(iii), 337F(i), 148, 149 PPC.

2. The arguments advanced by learned counsel for the parties have been heard and record of the case has been perused with their able assistance. These are petitions for bail before arrest, deeper appreciation is not permissible and only tentative assessment is required at this stage. It has been noticed by this Court that the case to the extent of Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners is distinguishable from that of Muhammad Shoaib and Muhammad Zubair petitioners, so first I would like to discuss

the case to the extent of Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners. It has been noticed by this Court that Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners are named in the promptly lodged FIR with the allegations that Muhammad Ehsan petitioner gave danda blow on the back side of head of Shakeel Ahmad complainant, Umar Shahzad petitioner gave danda blow on the head of complainant and Yasrab gave butt blow of pistol on the head of Muhammad Hassan injured. Admittedly the injuries attributed to Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners fall under sections 337A(ii) and 337A(iii) PPC. The statements of PWs particularly the statement of injured persons under section 161 Cr.P.C. are available on record and the same are duly supported by the medico legal certificates of the injured, which *prima facie* connect Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners with this occurrence. During investigation, Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners have been found involved in this case by the investigating officer and the recovery of weapons of offence is yet to be effected from them. In a recent judgment reported as **2016 SCMR 2064** in case of "Mukhtar Ahmad versus The State and others", Hon'ble Supreme Court of Pakistan has been pleased to observe that the concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police, but in this case, Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners have failed to point out any *mala fide* of the complainant or the local police for their false implication in the instant case, therefore, they do not deserve the extraordinary concession of pre-arrest bail. For the foregoing reasons and taking guidance from the case-law reported as

“Sarwar Sultan and others vs. The State and another” (PLD 1994 SC 133), this petition to the extent of Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners has got no force and the same is dismissed. The ad interim pre-arrest bail already granted to Muhammad Ehsan, Umar Shehzad and Yasrab Ali petitioners is also recalled.

3. As far as the case to the extent of Muhammad Shoaib and Muhammad Zubair petitioners is concerned, although petitioners are also named in FIR and the role of giving danda blows on the nose of Muhammad Shakeel complainant and back of Muhammad Hassan injured is assigned to Muhammad Shoaib petitioner, whereas the role of giving danda blow on the back of Muhammad Shakeel complainant is assigned to Muhammad Zubair petitioner, yet the fact remains that the injuries attributed to them admittedly fall under sections 337A(i) and 337F(i) PPC, which are bailable offences. It is settled law that the questions of sharing common intention and vicarious liability of the petitioners shall be determined by learned trial court after recording evidence. Admittedly Muhammad Shoaib and Muhammad Zubair petitioners are previous non-convict and never involved in any other case. They have already joined the investigation of the case, which as per investigating officer is complete to their extent, therefore, no useful purpose would be served by sending them behind the bars so as to enable them to come out of jail within few days.

4. For what has been discussed above, false implication of Muhammad Shoaib and Muhammad Zubair petitioners by the complainant cannot be ruled out of consideration and they have made out a case for grant of pre-arrest bail, *hence*, this petition to the extent of Muhammad Shoaib and Muhammad Zubair petitioners is allowed and the ad interim pre-arrest bail already granted to them is hereby confirmed subject to furnishing bail bonds in the sum of

Rs.100,000/- (Rupees one hundred thousand only) each with one surety in the like amount to the satisfaction of learned trial court.

5. 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

Moqaddas