

Form No: HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Miscellaneous No.63099-B of 2017

Nasir and 3 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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04.10.2017	Mr. Azeem Sarwar Baryar, Advocate with the petitioner in person Mr. Irfan Zia, Deputy Prosecutor General for the State and Muhammad Nazir ASI with record Ch. Abdul Rashid, Advocate for the complainant
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Through this petition under section 498 Cr.P.C. Nasir, Imran, Rizwan and Zahid petitioners have sought pre-arrest bail in case FIR No.259/17, dated 09.06.2017 registered at Police Station Cantt. Sialkot in respect of offences under sections 337A(i), 337A(ii), 337F(i), 337F(v), 337L(2), 147, 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, 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 Nasir and Imran petitioners is distinguishable from that of Rizwan and Zahid petitioners, so first I would like to discuss the case to the extent of Nasir and Imran petitioners. It has been noticed by this Court that Nasir and Imran petitioners are named in FIR with the allegations that Nasir petitioner gave iron rod blow on left little finger of Aurangzeb complainant and Imran gave iron rod blow on the head of Muhammad

Abbas injured and the injuries attributed to Nasir and Imran petitioners fall under sections 337F(v) and 337A(ii) 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 respectively petitioners with this occurrence. During investigation, respectively 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 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, Nasir and Imran 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 extra ordinary concession of pre-arrest bail. For the foregoing reasons and taking guidance from the case-law reported as "Sarwar Sultan and others versus The State and another" (PLD 1994 SC 133), this petition to the extent of Nasir and Imran petitioners has got no force and the same is dismissed. The ad interim pre-arrest bail already granted to Nasir and Imran petitioners is also recalled.

3. As far as the case to the extent of Rizwan and Zahid petitioners is concerned, although they are also named in FIR, yet the fact remains that no specific role has been assigned to them therein and a joint role of giving iron rod blows on the persons of Aurangzeb complainant and Muhammad Abbas injured is assigned to them therein. There are only two non-bailable offences in this case i.e. 337F(v)

and 337A(ii) PPC and admittedly the injuries falling under these sections are not attributed to Rizwan and Zahid petitioners. 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 Rizwan and Zahid 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 Rizwan and Zahid petitioners by the complainant with mala fide intention and ulterior motive 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 Rizwan and Zahid 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