

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

Criminal Miscellaneous No.78971-B of 2017

Khayal Din

Petitioner

versus

The State and another

Respondents

S. No. of Order/ Proceedings	Date of Order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary
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26.10.2017

Malik Zafar Iqbal, Advocate for the petitioner  
Mr. Irfan Zia, Deputy Prosecutor-General for the State and Zia ASI with record  
Mr. Muhammad Mumtaz Faridi, Advocate for the complainant

Through this petition under section 497 Cr.P.C. the petitioner has sought post-arrest bail in case FIR No.152/14 dated 24.08.2014 under sections 302, 34 PPC, registered at Police Station Kalabagh, District Mianwali.

2. The arguments advanced by learned counsel for the parties have been heard and record of this case has also been perused with their able assistance. This is bail after arrest and only tentative assessment is required at this stage. It has been noticed by this Court that although petitioner is named in FIR yet no specific role has been attributed to him and only the role of ineffective firing is attributed to him therein. Even otherwise, the petitioner has not caused any injury to the deceased and same is specifically attributed to co-accused Anwar Din, so the questions of vicarious liability of the petitioner and sharing common

intention by him with his co-accused for committing murder of the deceased 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). As far as the allegation of ineffective firing is concerned, allegedly the petitioner was armed with Kalashnikov at the time of occurrence, whereas a 303-bore rifle was recovered from the petitioner during the course of investigation. Even otherwise, it is admitted position of the case that no crime empty has been collected by the investigating officer during spot inspection and in this eventuality, the value of recovery of 303-bore rifle allegedly effected from the petitioner shall be assessed by learned trial court at an appropriate stage. Admittedly the petitioner is previous non-convict. He is behind the bars since 23.03.2017 without any fruitful progress in conclusion of his trial. Investigation of the case is complete and the petitioner is no more required for further investigation. His further incarceration in jail would not serve any useful purpose. Mere heinousness of offence is no ground to refuse bail to the accused, who other becomes entitled for this concession.

3. For what has been discussed above, the case of the petitioner becomes one of further inquiry covered by sub-section (2) of section 497 Cr.P.C. This petition is, therefore, allowed and the petitioner is granted bail after arrest subject to his furnishing bail bonds in the sum of Rs.200,000/- (Rupees two hundred thousand only) 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*

\*Moqaddas\*