

**Form No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
LAHORE
JUDICIAL DEPARTMENT**

Case No. Crl. Misc. No.133760-B/2018
Muhammad Sajjad Qamar. **Versus** The State etc.

Sr. No. of Orders/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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28.02.2018.

Mr. Asghar Ali Gill, Advocate for the Petitioner.

Mr. Humayoun Aslam D.P.G and Naeem ASI with record.

Mr. Zafar Zulqarnain Sahi, Advocate for complainant.

Muhammad Sajjad Qamar petitioner seeks post arrest bail in a case registered against him vide FIR No.100/2013 dated 25.03.2013 offences under sections 302, 148 & 149, PPC at police station Balochni District Faisalabad.

2. Precise allegation against the petitioner as narrated by the complainant in the FIR was that Sajjad Qamar petitioner who was allegedly armed with Kalashnikov inflicted burst of Kalashnikov on the person of Muhammad Naveed which landed on the back side of his head, left forearm and on his right hand who succumbed to the injures at the spot.

3. Learned counsel for the petitioner contended that petitioner left Pakistan on 10.03.2013 and came back to Pakistan on 01.07.2014 whereas alleged occurrence took place on 25.03.2013, therefore, the petitioner was abroad when the alleged occurrence took place; that during investigation police accepted the plea of alibi of the petitioner therefore he was declared innocent by the police; that Kalashnikov allegedly used by the petitioner at the time of

occurrence was not recovered from his possession; that petitioner is not connected with the motive part of the prosecution story. Thus, it is submitted that by accepting instant petition, petitioner is entitled to be released on bail.

4. Learned counsel for the complainant and learned DPG have vehemently opposed this petition on the grounds that petitioner is nominated in the FIR; that there was specific allegation against him that he was armed with Kalashnikov and inflicted firearm injuries on the person of Muhammad Naveed deceased which landed on the back side of his head, left forearm and on his right hand who succumbed to the injuries at the spot; that the ocular account furnished by the prosecution finds corroboration from the postmortem examination of Muhammad Naveed deceased; that petitioner has been declared innocent by the police simply on the basis of plea of alibi taken by him before the police ; that petitioner is not entitled to be released on bail on the basis of plea of alibi accepted by the police during investigation, rather, learned trial court is competent to decide the same after recording the prosecution's evidence. Thus, it is submitted that instant petition is liable to be dismissed.

5. I have heard the arguments of learned counsel for the parties, learned DPG and perused the record with care.

6. It has been noticed that petitioner is nominated in the FIR. There was specific allegation against the petitioner that he was armed with Kalashnikov and inflicted burst of Kalashnikov on the person of Muhammad Naveed which landed on the back side of

his head, left forearm and on his right hand Postmortem examination on the dead body of Muhammad Naveed deceased was conducted by the doctor who observed firearm injuries on his head, left shoulder and on his right hand, therefore, ocular account furnished by the prosecution qua the allegation against the petitioner finds corroboration from the postmortem examination report of Muhammad Naveed deceased. During investigation, petitioner was declared innocent by the police simply on the basis of Travelling History of the petitioner and according to the findings of I.O the petitioner was abroad when the alleged occurrence took place. While forming aforesaid opinion, police did not record the statement of the concerned officials of the Emigration Department from where the petitioner made departure from Pakistan and thereafter came back to Pakistan. During investigation the I.O neither took into possession the passport of the petitioner nor boarding Pass of the concerned Airports in order to confirm the Travelling History of the petitioner. No evidence is available on record that I.O verified the travelling tickets of the petitioner from the concerned officials. No material was collected from CCTV Cameras by the I.O in order to establish that on 10.03.2013 the petitioner made departure from Pakistan and came back to Pakistan on 01.07.2014. Mere opinion of the police without collecting any cogent evidence cannot be taken into consideration at the time of disposal of bail petition, therefore, the petitioner is not entitled to the concession of bail on the basis of plea of alibi accepted by the police during investigation, rather, only learned trial court is competent to decide the same after recording the

evidence of the parties. The petitioner was arrested in this case on 19.09.2017 and he remained absconder for a period of more than four years. The offence alleged against the petitioner comes within the purview of prohibitory clause of section 497 Cr.P.C. Prima facie sufficient incriminating material is available on record connecting the petitioner with the commission of instant occurrence.

7. For what has been discussed, above instant petition having no force stands dismissed.

(Sardar Muhammad Shamim Khan)
Judge

Approved for reporting

Judge

Shafique

Perusal of record reveals that petitioner had applied his pre-arrest bail before the learned trial Court but he failed to appear before the said Court and his pre-arrest bail was dismissed. After that he applied his pre-arrest bail for the second time but again he did not appear before the learned trial Court and his pre-arrest bail was dismissed.

3. In view of aforementioned situation this petition is not maintainable before this Court and stands dismissed in limine.

(Sardar Muhammad Shamim Khan)
Judge

Shafiq