

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Muhammad Ali Mazhar, JJ

MUHAMMAD RAMZAN---Petitioner

Versus

The STATE and others---Respondents

Criminal Petition No. 952 of 2021, decided on 8th October, 2021.

(Against the order of Lahore High Court, Multan Bench dated 12.7.2021 passed in Cr. Misc.

No.2824-B of 2021)

(a) Criminal Procedure Code (V of 1898)---

----Ss. 161 & 172---Examination of witnesses by the police---Statement of witness recorded in case diary (zimni) prepared under S. 172, Cr.P.C. instead of being recorded separately---Whether such statement constituted a witness statement under S. 161, Cr.P.C.---Held, that under S. 161(3), Cr.P.C. the police officer was to reduce in writing any statement made to him in the course of examination of any person supposed to be acquainted with the facts and circumstances of the case---Police officer was to make a separate record of the statement of each such person but in case the statement of such a person, recorded by the Investigating Officer (IO), was embodied in the case diary instead of being recorded separately, it was at best a procedural lapse on the part of the IO but the statement itself did not lose its character as a statement under S. 161, Cr.P.C.---Distinction between Ss. 161 & 172, Cr.P.C. was that while one dealt with the recording of the statement of witnesses / persons acquainted with the facts and circumstances of the case, the other was the information or opinion of the IO which he gathered and formed during the course of the investigation --- So if while recording his opinion in the case diary, the IO also recorded the statement of a witness, any such statement continued to pass for a statement under S. 161, Cr.P.C. and did not become a part of the case diary under S. 172, Cr.P.C.

Zulfikar Ali Bhutto v. State PLD 1979 SC 53; Nasrullah v. State 1980 PCr.LJ 5; Muhammad Akbar v. State 1985 PCr.LJ 338; Muhammad Tahir v. State 1986 PCr.LJ 3025; Khalid Pervez v. The State 1989 PCr.LJ 1824; Nazar Muhammad v. Mushtaq Ahmad PLD 1996 Lah. 277; Muhammad Riaz v. State PLD 2003 Lah. 290 and Muhktiar Hussain v. State and others - Criminal Miscellaneous No.7627-B/2020 and vide Order dated 29.03.2021 in Ghulam Murtaza v. State and others - Criminal Miscellaneous No. 659-B of 2021 ref.

(b) Penal Code (XLV of 1860)---

----Ss. 302, 148 & 149---Qatl-i-amd, rioting armed with deadly weapons, unlawful assembly---Pre-arrest bail, grant of---Further inquiry--- Investigating Officer (IO) categorically stated before the Court that on the basis of the statements of eight independent witnesses recorded by him, the accused, even though present at the site of the occurrence, was neither involved in the commission of the offence nor was he carrying any weapon---Two of the co-accused had a specific role in the crime report but were granted bail by the High Court on similar statement of the IO that they while present at the site of occurrence were not involved in the commission of the offence and were not armed with any weapon---In view of the statement of the IO supported by the statement of the witnesses there were sufficient grounds for further inquiry into the guilt of the accused---Petition for leave to appeal was converted into appeal and allowed, and accused was admitted to post-arrest bail.

James Joseph, Advocate Supreme Court for Petitioner.

Ch. Muhammad Sarwar Sandhu, Additional P.G., Farhat, SHO, Jalil and Ghulam Yasin, I.Os. for the State.

Date of hearing: 8th October, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Petitioner seeks leave against the order dated 12.7.2021, wherein post arrest bail in case FIR No.325/2020, under sections 302, 148 and 149, P.P.C., Police Station Shah Jamal, district Muzaffargarh, was denied to the petitioner by the High Court.

2. We have heard the learned counsel for the petitioner, as well as, the learned Additional Prosecutor General and the Investigating Officer (IO). It has been categorically stated before us by the IO that on the basis of the statements of eight independent witnesses recorded by him, the petitioner, even though present at the site of the occurrence, was neither involved in the commission of the offence nor was he carrying any weapon. At this juncture, learned Additional Prosecutor General vehemently pointed out that the statement of witnesses referred to by the IO have been recorded in the case diary (zimni) prepared under section 172 of the Cr.P.C and do not constitute statement of a witness under section 161, Cr.P.C.

3. Under section 161(3), Cr.P.C. the Police officer is to reduce in writing any statement made to him in the course of examination of any person supposed to be acquainted with the facts and circumstances of the case. The Police Officer is to make a separate record of the statement of each such person but in case the statement of such a person, recorded by the IO, is embodied in the case diary instead of being recorded separately, it is at best a procedural lapse on the part of the IO but the statement itself does not lose its character as a statement under section 161, Cr.P.C. The distinction between sections 161 and 172, Cr.P.C is that while one deals with the recording of the statement of witnesses / persons acquainted with the facts and circumstances of the case, the other is the information or opinion of the IO which he gathers and forms during the course of the investigation. So if while recording his opinion in the case diary, the IO also records the statement of a witness, any such statement continues to pass for a statement under section 161, Cr.P.C. and does not become a part of the case diary under section 172, Cr.P.C.¹

4. We have also noticed that two of the co-accused namely Mukhtiar Hussain and Ghulam Murtaza had a specific role in the crime report but were granted bail² by the High Court on similar statement of the Police that they while present at the site of occurrence were not involved in the commission of the offence and were not armed with any weapon.

5. In view of the statement of the investigation officer supported by the statement of the witnesses discussed above, we are of the view that there are sufficient grounds for further inquiry into the guilt of the petitioner. The petitioner (Muhammed Ramzan) is, therefore, admitted to post-arrest bail, subject to furnishing bail bond in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the trial Court. This petition is converted into appeal and allowed accordingly.

MWA/M-62/SC Order accordingly.