

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Amin-ud-Khan, JJ

SALMAN KHAN---Petitioner

Versus

The STATE---Respondent

Criminal P. No. 127-Q of 2021, decided on 13th January, 2022.

(Against the order dated 09.10.2021 passed by the High Court of Balochistan, Quetta in Criminal Bail Application No.633 of 2021)

Criminal Procedure Code (V of 1898)---

---S. 497(1)---Constitution of Pakistan, Art. 185(3)---Penal Code (XLV of 1860), Ss. 302, 319, 322, 324 & 34---Qatl-bis-sabab, qatl-i-khata---Bail, grant of---Four members of the law enforcement agency, including the accused, allegedly signaled the car of the complainant to stop but he continued to drive on, whereupon the accused fired at the car, which ended up in causing injuries to the complainant and death of his cousin, who was also seated in the car---Accused and other members of the law enforcement agency were on their routine duty of maintaining law and order in the city, at the time of incident---Nothing was available on record to show that there was a background of any enmity between the parties, or the incident was the result of some provocation, or the accused fired at the car that had tinted glasses, with the intention to cause death of the complainant and his cousin---From the contents of the crime report, it appeared that an offence of qatl-bis-sabab punishable under S. 322, P.P.C. was made out other than qatl-i-khata punishable under S. 319, P.P.C.---However, qatl-i-amd under S. 302 did not appear to be made out in the present facts and circumstances of the case---Section 322, P.P.C. fell outside the prohibitory clause of S. 497(1), Cr.P.C. while S. 319, P.P.C. was bailable---Detention of the accused pending trial could only be justified if the case fell within the scope of any of the exceptions stated in the cases of Tariq Bashir v. State PLD 1995 SC 34, Muhammad Tanveer v. State PLD 2017 SC 733 and Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488---However, nothing was available on record that may attract any of the said exceptions and justify denial of post arrest bail to the accused---Petition for leave to appeal was converted into appeal and allowed, and the accused was admitted to bail.

Manzoor v. State 1992 PCr.LJ 1374; Muhammad Nadeem v. State 1998 MLD 1537; Yousuf Khan v. State 2000 PCr.LJ 203; Aamir v. State 2006 PCr.LJ 1236; Tariq Bashir v. State PLD 1995 SC 34; Muhammad Tanveer v. State PLD 2017 SC 733 and Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 ref.

Kamran Murtaza, Senior Advocate Supreme Court for Petitioner.

Qazi Mushtaq Ahmed, Additional P.G. Balochistan for the State.

Amir Muhammad Lehri, Advocate Supreme Court for the Complainant.

Date of hearing: 13th January, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against the order dated 09.10.2021 passed by the High Court of Balochistan, whereby post-arrest bail has been denied to him in case FIR No.68/2021 registered at Police Station Sariab, for offences punishable under sections 302, 324 and 34, P.P.C.

2. The allegation in the crime report against the petitioner, a member of the Eagle Squad (a law enforcement agency), briefly stated is that four members of the Eagle Squad, including the petitioner, signaled the car of the complainant to stop but he continued to drive on, whereupon the petitioner fired at the car, which ended up in causing injuries to the complainant and death of his cousin, Faizan, who was also seated in the car.

3. We have heard the parties and examined the record. The petitioner and others members of the Eagle Squad were on their routine duty of maintaining law and order in the city, at the time of incident. There is

nothing on record to show that there was a background of any enmity between the parties, or the incident was the result of some provocation, or the petitioner fired at the car that had tinted glasses, with the intention to cause death of the complainant and his cousin. From the contents of the crime report, it appears that an offence of qatl -bis-sabab punishable under section 322, P.P.C. is made out other than qatl-i-khata punishable under section 319, P.P.C. However, qatl-i-amd under section 302 does not appear to be made out in the present facts and circumstances of the case. Section 322, P.P.C. falls outside the prohibitory clause of section 497(1), Cr.P.C.¹ while section 319, P.P.C. is bailable. That being so, the detention of the petitioner pending trial can only be justified if this case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir², Muhammad Tanveer³ and Zafar Iqbal.⁴ There is, however, nothing on record that may attract any of the said exceptions and justify denial of post arrest bail to the petitioner.

4. The High Court has not exercised its discretion judiciously in denying the relief of post arrest bail to the petitioner. This petition is, therefore, converted into appeal and allowed: the impugned order is set aside and the bail application of the petitioner is accepted. The petitioner is admitted to bail subject to his furnishing the bail bond in the sum of Rs. 100,000/- with one surety each in the like amount to the satisfaction of the trial Court.

5. Needless to mention that the observations made in this order are of tentative nature which shall not in any manner influence the trial court, and that this concession of bail may be cancelled, under section 497(5), Cr.P.C., if the petitioner misuses it in any manner, including causing delay in the expeditious conclusion of the trial.

MWA/S-3/SC Bail granted.