

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 623/B/2020.

Rehmat Shah and another

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.04.2020.	Mr. Imran Farooq, Advocate for petitioners. Mr. Muhammad Sohail Khurshid, State Counsel. Azhar Hussain Shah, DSP (Legal), Islamabad Police. Hakim Khan Niazi, SHO P.S. Shahzad Town, Islamabad. Abdul Waheed, Darya Khan, Muhammad Iqbal and Muhammad Akram, S.Is.

Through this Crl. Misc. petition, the petitioners Rehmat Shah and Malik Hassan Shameem have applied for post-arrest bail in case FIR No.219, dated 12.07.2015, U/S 396/412 PPC, P.S. Shahzad Town, Islamabad.

2. Brief facts referred in the instant FIR lodged on the complainant of Ghulam Abbas Shah/respondent No.2 are that on 12.07.2015 he was present in super mart general store alongwith his security guard Gulzar Khan and his son Syed Adnan Hussain Shah when four armed persons entered in the super store aged about 22 to 28 years, snatched cash amounting to Rs.1,00,000/- from cash counter and have also snatched amount of Rs.80,000/- to 90,000/- from distributor Malik Tahir, who was also present in the store. However, during the course of snatching 12 bore gun from security guard

Gulzar Khan, one of the accused persons fired which landed at the head of security guard. In the meanwhile Syed Mudassar Hussain Shah driver of distributor entered into store to help the security guard armed persons also snatched his driving license, ATM card, mobile phone Nokia and during this process security guard Gulzar Khan died on spot and all he accused persons fled away after snatching 12 bore gun.

3. Learned counsel for the petitioners contends that petitioner No.1 Rehmat Shah's earlier post arrest bail application was dismissed by this Court vide order dated 26.12.2019, passed in Crl. Misc. No.786/B/2019 and a direction was issued for early conclusion of the trial within period of six months, however, due to pandemic covid-19, trial Court has not yet concluded the trial, therefore, instant petition has been filed; that petitioner No.2 Malik Hassan Shameem was arrested on 10.08.2019 and no recovery has been effected from him, even he has not been sent to judicial lock-up for the purpose of identification parade and trial has not yet been concluded due to pandemic situation and lockdown in the country; that prosecution witnesses whose statements have so far been recorded have not alleged any role to petitioner No.2, therefore, his case falls within the purview of further inquiry.

4. Conversely, learned State counsel alongwith DSP (Legal) and I.O contends that trial has already been concluded and only four PWs are left who will be

produced before the trial Court and trial might be concluded within next one month; that petitioners remained fugitive from law for more than four years and they are not entitled for concession of post-arrest bail.

5. Arguments heard, record perused.

6. From the cursory glimpse of record, it reveals that petitioners have been nominated in case FIR No.219, dated 12.07.2015, U/S 396/412 PPC, in which one Gulzar Khan security guard was murdered during the course of armed robbery by four unknown persons who have snatched the cash, mobile phone, .12 bore gun from security guard and fled away from scene. Two of the accused persons have been identified during the course of identification parade and those two accused persons have already been convicted and sentenced by the trial Court namely Rahim Dad and Aamir Sohail in the earlier proceedings of the trial Court, however, present petitioners were arrested eight months ago in this case on 10.08.2019 after delay of four years and they remained fugitive from law, whereas earlier post-arrest bail petition of petitioner No.1 was dismissed vide order dated 26.12.2019, therefore, second post-arrest bail application on the ground of delay in trial could not be considered valid as direction given by this Court in the said order has not yet been expired.

7. The tentative assessment of record reflects that both the petitioners remained fugitive from law and

delay in conclusion of trial has been attributed to these petitioners, even 16 prosecution witnesses have been recorded and only four prosecution witnesses have left, whose statements are likely to be recorded in next one month. DSP (Legal) stated that trial would be concluded within the direction period given in the earlier order.

8. Keeping in view the above, fugitive offender is not entitled for the normal concession in such type of cases, even the offence with which petitioners have been charged falls within the ambit of prohibitory clause of Section 497 Cr.P.C., therefore, instant post arrest bail application of both the petitioners stands dismissed. However, while considering the earlier direction as well as the view taken by the Apex Court in case reported as 2011 SCMR 1332 (Rehmat Ullah V/s. The State and another) learned trial Court seized with the matter is directed to conclude the trial on or before 31.06.2020 by all means.

(MOHSIN AKHTAR KAYANI)
JUDGE,