

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.936-B/2020

MUHAMMAD IQBAL ALIAS BALA GUJJAR.

Versus

THE STATE AND ANOTHER.

Petitioner by: Malik Qamar Afzal, Advocate.
Complainant by: Raja Rizwan Abbasi, Advocate for Complainant.
State by: M/s Ruqia Sami, AAG.
Mr. Ishfaq Warraich, ASI with record.
Date of Hearing: 28.08.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, the petitioner Muhammad Iqbal alias Bala Gujjar son of Mian Ali Haider seeks post arrest bail in case FIR No.248/2020, dated 22.06.2020, for offences under section 365/392/452/506(II)/34 PPC, registered at Police Station Ramna, Islamabad.

2. The Petitioner/accused earlier applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed, vide order dated 02.07.2020. Thereafter his similar request was also declined by the learned Additional Sessions Judge (West), Islamabad, vide order dated 13.07.2020; hence, this petition for bail after arrest.

3. As per contents of FIR, facts in brief are that the Complainant and petitioner are property dealers; that the petitioner had been extending threats of abducting him; that previously the accused abducted the complainant and demanded Rs. 50,000,000/- (rupees fifty million) as ransom but he managed to escape; that on 22.06.2020 accused persons kidnapped Arshad, the driver of the complainant and his two friends namely Anwar Zeb and Tariq Amin by intercepting them in two vehicles (Prado black colored and Toyota GLI white colored) at G-10 roundabout and were taken to PHA Flat; that the driver was beaten by the accused persons and then brought him to complainant house and kept on asking about complainant from his family members; that the accused gave beating to complainant's children and extended threats to her wife; that they left the complainant's house but after a while returned along with the driver and above said friends of the Complainant and again harassed and extended threats to his family members; that in the meantime the police party arrived and arrested the accused.

4. Learned counsel for the petitioner submitted that the petitioner is innocent who has falsely been involved in the present case as the petitioner and other accused were called by the complainant to settle disputes over amount of sale and purchase of immovable property; that the offence reported in FIR is a self concocted story of complainant; that the offences mentioned in the FIR are not attracted at all as the business relation between the petitioner and complainant of the case is admitted; that registration of FIR is aimed at frustrating the transaction of a plaza and to extend the date of payment; that neither there is anything available on record against the petitioner nor there is any direct or indirect witness against the petitioner; that there is no report of the incident on 15, therefore, presence of Police party at the spot is also suspicious; that the complainant is not an eye witness is only narrating what he has heard from the persons allegedly tortured and beaten by petitioner on gun point; that, therefore, the report of the FIR is nothing but 'heresay'; that it has been alleged in the FIR that the Petitioner has earlier also kidnapped the complainant for ransom of Rs. 50,000,000/- but he managed to escape from the window but no FIR was lodged of the heinous crime of kidnapping only the complaint of the incident was registered on the web portal of Pakistan Citizen's Portal, Police Department, Islamabad; that case of the petitioner is of further inquiry falling within the ambit of Section 497(2) Cr.P.C; that the investigation to the extent of petitioner has been completed and he is no more required by the police; that challan has been submitted and the charge against the petitioner/accused has been framed; that there is no likelihood of petitioner's abscondance and tampering with the prosecution evidence. Learned counsel contended that petitioner is behind the bars since his arrest and is ready to furnish surety bonds to the satisfaction of the court if enlarged on bail. Learned counsel lastly contended that co-accused of the petitioner have already been granted bail vide order dated 30.07.2020 and according to the rule of consistency he is also entitled for concession of bail.

5. Learned counsel for complainant/Respondent No.2, submitted that petitioner is the principal accused nominated in the FIR who is involved in numerous cases of abducting, kidnapping for ransom and has been convicted in many cases. He operates his criminal activities with other offenders as a gang and the present accused/petitioner is his accomplice. He referred a Suo Moto case of Hon'ble Peshawar High Court, whereby, perpetual warrant of arrest of the petitioner has been issued as he remained absconder in that case and submitted that the petitioner in that case has also been convicted and sentenced. The learned counsel while referring the provisions of sections mentioned in the FIR submitted that all the ingredients of sections are satisfied as the complainant's driver namely Arshad and his two friends namely Anwar

Zeb and Tariq Ameen were intercepted on the road with the intention of kidnapping and were taken to a PHA flat apparently belonging to one of the co-accused where they were kept illegally. Learned counsel further contended that all the three persons who were intentionally kidnapped and violently beaten by the accused persons to obtain information about the whereabouts of the complainant; that abductees were brought to the house of the complainant where the petitioner harassed and assaulted the wife and minor daughter of the complainant; that on arrival of the police, all the accused persons were caught red-handed and were taken to the police station where the complainant arrived and identified all the accused along with petitioner as they were known to him; that thereafter the complainant got registered FIR against all the accused. He submitted that the CCTV Footages are available on record where intercepting and snatching vehicle of the complainant by the accused is clearly visible which also makes a case of robbery and dacoity. Learned Counsel for the Complainant referred to the bail order dated 30.07.2020, whereby, the bail has been granted to the co-accused persons nominated in the present FIR and submitted that the grant of bail to them has been considered in the light of the judgment of Hon'ble supreme court passed in Tariq Bashir's case wherein exceptions has been laid down for declining bail and submitted that the case of the present petitioner falls within these exceptions as the present petitioner has been convicted by the Hon'ble Peshawar High Court in FIR No. 274/2004 dated 16.02.2004 and perpetual warrants has also been issued against him on 22.09.2014, in which case he is an absconder. He thus submitted that rule of consistency for grant of bail to the petitioner, as per terms of the co-accused is not applicable. The arguments of the learned Counsel has been considered and the case of the Petitioner would be examined according to its own merits. Learned counsel further submitted that petitioner is the main accused in the case and role of the other co-accused who have been granted bail by this Court is entirely different from him, therefore, rule of consistency would not apply in his case. Learned counsel, in view of the above submissions, submitted that the petitioner is not entitled for concession of bail as he is involved in heinous criminal activities.

6. Learned State counsel along with the I.O. of the case, furnished the police record and while endorsing the arguments of the learned counsel for Complainant submitted that the accused petitioner along with other co-accused are involved in heinous offences of abduction for ransom and house trespass and sufficient incriminating material is available against him on record and in view of the facts and circumstances, the petitioner/accused is not entitled for concession of bail.

7. Regarding suo moto notice taken by the Peshawar High Court, learned counsel for Petitioner submitted that the case pertains to the year 2004 for which a compromise has been effected between the petitioner and other party which was produced before the high Court in light whereof the case has been dismissed; however, any legal proceeding against the petitioner according to the orders of Peshawar High Court will take its own course. In the jurisdiction of this Court there exists no previous record of any offence against the petitioner as alleged by the complainant.

8. Heard arguments of learned Counsel for the petitioner, learned counsel for complainant as well as learned State Counsel and have also perused the police record submitted during the hearing of the case.

9. Perusal of the record submitted by the Investigating officer shows that FIR was registered by the complainant mainly for abduction for ransom, tress-passing the house of the complainant as well as violently beating the complainant's driver, friends and family members. Apart from that it has also been mentioned in the opening sentences of the FIR that the complainant was earlier abducted by the petitioner for ransom but he anyhow managed to escape but that the complainant opted not to register a criminal case against the petitioner, however, the incident was part of the present FIR. I have carefully perused the contents of the FIR and the police record produced by the I.O. The Petitioner as per FIR, has been assigned the lead role of kidnapping and abduction of three persons i.e. Arshad the driver, Tariq Ameen and Anwarzeb the friends of the compliant, who after forcible abduction from G/10 round about were kept in PHA flats, G/10 Markaz and their cell phones were also snatched. It has been mentioned in the FIR that the accused were asking about the whereabouts of the Complainant. The sketched map in the police record shows that the house of the complainant and PHA Flat owned by one of the co-accused are on opposite side of each other, but to reach the house of the complainant, petitioner had to badly torture the abductees. Arshad in his statement has recorded that the accused took him to the complainant's house but he was left in the vehicle by all the accused when they illegally entered the complainant's house and tortured the family to know about the complainant but returned unsuccessful. However, the police arrested the accused persons including petitioner red handed on the second attempt. There is nothing on record as to how the Police reached the scene of alleged incident. The statement of the Anwarzeb, one of the abductees has also been perused, according to which, while abducting, the car keys was snatched from him which means he was driving the car, (statement of Arshad shows that he was driving the car). After some conversation the alleged accused persons returned his phone and he was allowed to go. He then called 15 and reported the matter;

when he noticed chasing by accused, he entered the nearby SP office then police arrested all the accused red handed in the SP office. It has been noticed that the address of place of arrest has not been mentioned neither in the FIR nor in the statements recorded u/s 161 Cr.P.C. The statement of the wife of the complainant has also been perused (written in black ink) according to which 4 persons barged in her house with Kalashnikov, she recognized the petitioner who tortured and threatened her and children, however due to their hue and cry all the accused ran away; she informed the complainant who informed the police who arrested the accused. It is noteworthy that ending line in her statement u/s 161 Cr.P.C has been written in blue ink which says that marks of scratches are still visible on face and neck. It has been consistently stated by the abductees and the wife of the complainant that they were badly tortured by the petitioner and co-accused, however no medical examination has been conducted by the prosecution as not found in record.

10. Perusal of the record further revealed that admittedly the complainant as well as all the accused in the case are property dealers, duly known to each other, having dispute over certain deals of sale and purchase of properties involving huge amount, as per agreements placed on record between the complainant and co-accused. Keeping the business relations between the parties the above stated facts, borne out of the prosecution record are analyzed, and found that contradictions between material on prosecution record and statement of parties, required in-depth scrutiny of circumstances which exercise can be made during the trial, hence, further inquiry is required in the case.

11. It has also been noted that the accused is nominated in the case of abduction for ransom and trespassing, whereas, offence of robbery has also been included later on but recovery of any weapon has not been effected from the petitioner. Apart from that it is also surprising that allegations of abduction of complainant's driver and friends have been leveled against petitioner but it is also mentioned in the FIR that the accused brought the alleged abductees to the house of complainant with them. Moreover, medical report of the complainant's driver and his friends or family members who were allegedly beaten by the accused, has also not been obtained. The said facts create serious doubts about the prosecution story and it is settled law that even for purposes of bail, law is not to be stretched in favour of the prosecution and if any benefit of doubt arises, it must go to the accused. The cases relied upon are **"Amir vs. The State" (PLD 1972 SC 277)**, **"Shabbiran Bibi vs. The State" (2018 P Cr. L J 788)** and **"Syed Hassan Ali Shah vs. The State" (2019 P Cr. L J Note 159)** then it has been held in case reported as **"Zaigham Ashraf vs. The State" (2016 SCMR 2018)** that *"for getting the*

relief of bail accused only had to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case then he was entitled to avail the benefits of it”.

12. During his arguments learned counsel for the complainant submitted that the alleged accused/petitioners after their arrest from the spot were taken to the Police Station where the complainant later arrived and identified them as he knew them. It is not understandable when he knew all the accused then why he did not nominate the petitioner with specific role in the commission of offence at the time of registration of FIR. Moreover, there is nothing available on record regarding commission of offence except photographs in which two vehicle can be seen intercepting one vigo jeep but same required to be corroborated with the direct and circumstantial evidence and its veracity can be determined through proper trial after recording of evidence as at the time of bail as deeper appreciation of record is not permissible at bail stage rather only tentative assessment is to be made. Thus, in light of said observations, case of the accused becomes one of further inquiry under Section 497(2) Cr.P.C. Reliance in this regard is placed on the case law reported as ***Khiyal Saba and another Vs. The State and another (2020 SCMR 340)*** and ***Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310)***. Further, challan has already been submitted and charge has been framed, whereas, petitioner is incarcerated since, his arrest on 22.06.2020. It has been observed by the august Supreme Court of Pakistan in the case of ***“Manzoor and 4 others v. the State” (PLD 1972 SC 81)*** that:-

“the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run”

13. As regards the fact that the petitioner has been convicted in an FIR lodged in 2004 and issuance of perpetual warrant by Hon’ble Peshawar High Court, the record revealed that proceedings of his transfer are in process, however, it is also settled law that each and every case should have been judged on its own merits and in the present case there exist sufficient doubts in the prosecution story to make petitioner’s case of further inquiry falling within the ambit of Section 497(2) Cr.P.C. Guidance in this regard has been sought from the case law reported as ***Muhammad Faiz alias Bhoora Vs. The State (2015 SCMR 655)*** and ***Shakeel Ahmed Vs. The State (2009 SCMR 174)***.

14. Since, the challan in the present case has already been submitted and the charge has been framed, therefore, there is no likelihood of tempering with the

record by the petitioner/accused. Further there is no apprehension of the petitioner/accused for abscondence.

15. For what has been discussed above, this petition is accepted and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

16. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

Junaid