

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Misc. No. 813-B/2020

Nawab Khan.
Versus
The State and another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.07.2020.	Mr. Abdul Majid Afridi, Advocate for petitioner. Mr. Zohaib Hassan Gondal, State Counsel alongwith Muhammad Khan- Sub Inspector with record.

The petitioner (Nawab Khan S/o Rowail Khan) seeks bail after arrest in the case F.I.R No. 08 dated 06.01.2018, under Sections 395, 412, 170, 171 & 457 P.P.C, registered with Police Station Tarnol, Islamabad.

2. Precisely, prosecution case is that on 07.03.2019, the petitioner along with his co-accused allegedly committed dacoity at the house of the complainant.

3. The petitioner moved bail application before the learned Judicial Magistrate Section 30, Islamabad- West, which was dismissed vide order dated 10.04.2020. Thereafter, he moved bail petition before the learned Additional Sessions Judge (West), Islamabad, which was also dismissed vide order dated 21.05.2020, hence, the instant petition.

4. Learned counsel for the petitioner contended that the petitioner has not committed any offence but has been falsely involved in the instant case; that no identification parade of the petitioner was held; that no recovery has been effected from the petitioner; that the investigation has been completed and the petitioner is no more required to the police. Lastly, prayed for grant of bail.

5. Conversely, learned State counsel vehemently opposed the arguments advanced by the learned counsel for petitioner contending that there is no malafide on the part of complainant to involve the petitioner in the present case. Further contended that the petitioner is also involved in F.I.R No.30/2018 under Section 395 P.P.C, registered at Police Station Shams Colony and F.I.R No.246/2017 under Section 395, 412, P.P.C registered at Police Station Noon, Islamabad, therefore, he is not entitled for the grant of post arrest bail.

6. Arguments heard, record perused.

7. Briefly, the story narrated by the complainant is that on 05.01.2018 at about 3.00 a.m. he along with his family members was sleeping in his house; that five unknown accused persons entered into his house and informed him that they are employees of Rangers and they have to search his house. It is further stated that during the search, they took away 4-1/2 tola gold ornaments, Rs.50,000/- cash; that their age was between 30/40 years of age and that he can recognize them if they come before him.

8. Perusal of the record reveals that no identification parade has been conducted during the course of investigation to identify the real culprits, that nothing has been recovered from the petitioner during the course of investigation, which, *prima facie*, makes the case one of further inquiry in terms of section 497 Cr.P.C. Deeper appreciation of evidence is not permissible at bail stage. No purpose would be served to the prosecution if the accused remains behind the bars for an indefinite period. It is important to mention that bail cannot be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate

conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of 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. Reliance in this regard is placed upon the cases reported as "*Manzoor and 4-others Vs. The State*" (PLD 1972 Supreme Court 81), and "*Muhammad Shafique and another versus The State and others*" (2017 S C M R 79).

9. So far as the contention of the learned State counsel that similar nature of cases have already been registered against the petitioner is concerned, there is no previous record of the petitioner to have been convicted, as such, he cannot be treated as hardened criminal and it cannot be a ground to withhold the concession of bail. Reliance in this regard is placed upon the case reported as "*Babar Hussain Vs. The State and another*" (2020 SCMR 871) wherein it has been held as under:-

As far as the contention of learned Law Officer that the petitioner is involved in six other criminal cases would not disentitle him from the relief sought for as learned Law Officer frankly conceded that petitioner has not been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance in this regard is placed upon cases titled as "Moundar and others v. The State" (PLD 1990 SC 934) and "Muhammad Rafique v. The State" (1997 SCMR 412)

10. For the forgoing reasons, instant petition is **allowed** and petitioner is admitted to post arrest bail subject to his furnishing bail bond in the sum of Rs. 1,50,000 (Rupees one lac fifty thousand only) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. It is needless to mention here that the observations made hereinabove are tentative in nature and shall not design to influence the trial.

(GHULAM AZAM QAMBRANI)
JUDGE

*M. 7/11 **