

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 628-B of 2020.

Absar alias Billa.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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08.04.2020. Mr Rais Mumtaz Hussain, Advocate for the petitioner.
Mr Shafiq ur Rehman, Advocate for the complainant.
Mr M. Atif Khokhar, State Counsel.
Mr Tariq, SI with record.

The petitioner Absar alias Billa son of Shah Sawar has sought post arrest bail in case F.I.R. No. 197, dated 11.05.2019, registered under sections 392/411 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Koral, Islamabad.

2. Brief facts as alleged in the FIR are that on 08.05.2019 while the complainant was withdrawing cash from ATM, two unknown persons ~~on gun point~~ forcibly snatched cash amount of Rs.16,000/- and a mobile phone. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case with mala fide intention and ulterior motives; allegations against the petitioner are false, frivolous and baseless; the petitioner is innocent and has not committed the alleged offences; no incriminating material was recovered from the

petitioner; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; offences do not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner has no criminal record; the petitioner is not nominated in the FIR; the petitioner has been incarcerated for more than five months; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the prosecution witnesses are false; the occurrence is highly doubtful; no direct evidence is available on the record against the petitioner; recovery is planted one; the co-accused has been enlarged on bail and keeping in view rule of consistency, the petitioner is also entitled to the same relief; the case against the petitioner comes within the purview of further inquiry; there was no resistance during the occurrence; identification parade was not conducted in accordance with law; story as narrated in the FIR is false; mere recovery does not constitute an offence under section 392 PPC, hence urges for the grant of post arrest bail.

4. The learned State Counsel assisted by the learned counsel for the complainant has appeared alongwith Tariq SI. The learned counsel for the complainant has stated that the latter has instructed him not to contest grant of bail. The Investigating Officer has also confirmed the said statement; the petitioner is a habitual offender; the petitioner is also involved in four other cases of the same nature; the petitioner committed a heinous offence and does not deserve extension of concession of bail at this stage; the complainant has no previous enmity with the petitioner; report under section 173 of Cr.P.C. has been submitted before the learned

trial Court. They have therefore, prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record reveals that the alleged occurrence had taken place on 08.05.2019, whereas the instant case was registered on 11.05.2019 i.e. after a delay of three days. The delay has not been explained. The petitioner was arrested in the instant case on 01.12.2019 i.e. after a period of seven months. Whether or not the identification will sustain requires further probe. The learned counsel for the complainant has also stated that he does not oppose the grant of bail. The role of the petitioner and his involvement requires further probe. Investigations qua the petitioner have been completed and he is no more required for the purposes thereof. The role of the petitioner definitely requires further probe. The co-accused of the petitioner has been enlarged on bail and on the touchstone of principle of consistency the petitioner is also entitled to the same relief. The petitioner has been incarcerated for the last more than five months. In the facts and circumstances of the instant case, the continued incarceration of the petitioner is not likely to serve any useful purpose at this stage.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD / 1972 S.C. 81] as follows:

"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".

8. In the circumstances as mentioned above, this petition is **allowed** and the petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings, before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**