

ORDER SHEET  
ISLAMABAD HIGH COURT  
ISLAMABAD

**Crl.Misc.No.731-B/2020**

Abdul Moiz Khan

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.
05.	02.6.2020.	<p>Qazi Rehan Shabbir, Advocate for Petitioner. Mr.Muhammad Shahzad Siddiqui, Advocate for respondent No.2. Mr.Hasnain Haider Thaheem, State Counsel. Mr.Nasrullah, ASI, PS Aabpara, Islamabad. Mr.Fazal Khaliq, S.I, PS Aabpara, Islamabad.</p>

Through this Criminal Miscellaneous application, the Petitioner has prayed for his post arrest bail in Case FIR No.141 dated 07.4.2020 under Section 406/34 PPC registered at Police Station Aabpara, Islamabad.

2. The brief facts referred in the instant FIR are that on 08.12.2019 Shehroz Alam Khan and his cousin Abdul Moiz Khan obtained vehicle No.IG-035, Honda Civic, Model 2019 on lease from the complainant against monthly rent of Rs.150,000/- and lateron they removed the tracker of the said vehicle on 23.1.2020 and further pledged the vehicle with one Aftab Bhatti against consideration of Rs.1200000/-

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case and as such his role in the instant matter is of a guarantor under the lease agreement whereby vehicle in question was obtained on lease by principal accused Shehroz Alam Khan; that the ingredients of entrustment in terms of Section 406 PPC are not made out; that the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C.; that the investigation has been completed and Petitioner is no more required by the police for further investigation; that the petitioner is behind the bars since his arrest i.e. 23.4.2020 and his further incarceration in Jail would not serve any useful purpose. It has lastly been contended that trial has not yet been commenced and there is no likelihood of early conclusion of the trial, therefore, Petitioner is entitled for post arrest bail.

4. Learned Counsel for complainant alongwith learned State counsel contends that Petitioner is habitual offender and is involved in number of cases of similar nature and has extended

guarantee in different lease agreement in which vehicles have been misappropriated; that principal accused is still at large, however, vehicle in question has been recovered by the I.O.

5. Arguments heard. Record perused.

6. Perusal of record reveals that petitioner has been nominated in the above mentioned criminal case with the allegation that he alongwith his cousin obtained vehicle on lease from the complainant and later on misappropriated the same. The tentative assessment of record reflects that principal accused Shehroz Alam Khan had entered a lease agreement of the vehicle No.IG-035, Honda Civic, Model 2019 with complainant whereby present petitioner was only a guarantor of the said lease agreement, later on vehicle was misappropriated and subsequently further handed over to one Aftab Bhatti. However, question remains the same that ingredients of entrustment of the property is attracted towards the petitioner or otherwise and this aspect has to be considered during the course of trial. The offence with which Petitioner has been charged does not fall within the prohibitory clause of Section 497 Cr.P.C. It is trite law that when there was an agreement between the parties against a consideration, the dispute is to be considered of a civil nature and same could not be considered in terms of Section 406 PPC. The challan has been submitted in the Court but charge has not yet been framed and there is no likelihood of early conclusion of the trial. In these circumstances the grant of bail in such like offences is a rule and its refusal is an exception. **Reliance is placed on case law titled Tariq Bashir etc Versus The State (PLD 1995 SC 34) and Muhammad Tanveer Vs The State (PLD 2017 SC 733).**

7. In view of above position, Petitioner is entitled for post arrest bail, therefore, instant post arrest bail application is allowed and petitioner is admitted to post arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- with two sureties in the like amount to the satisfaction of the learned trial Court.

(MOHSIN AKHTAR KAYAN)  
JUDGE