

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.462-B/2019

Shaharyar Ahmed

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.
	22.07.2019	Petitioner in person along with his counsel Mr. Humair Saleem Khan Cheema, Advocate Mr. Sadaqat Ali Jahangir, learned State Counsel with Raees A.S.I. Raja Adeel Shaukat, Advocate for the complainant

Through the instant writ petition, the petitioner, Shaharyar Ahmed S/o Mian Zahid Khurshid, seeks pre-arrest bail in case FIR No.156, dated 29.05.2019, for offences under Sections 406 and 34 PPC, registered at Police Station Lohi Bher, Islamabad.

2. Earlier the petitioner's ad-interim pre-arrest bail was recalled by the learned Additional Sessions Judge, Islamabad, vide order dated 29.06.2019.

3. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in this case with *malafide* intentions and ulterior motives; that there is a delay of almost three months in lodging the F.I.R.; that the complainant is not owner of the vehicle in question; that the petitioner was a *bonafide* purchaser of the vehicle in question, which he purchased from one Mehmoon Khan Niazi through agreement dated 07.11.2018; that after registration of the F.I.R. in question, the petitioner filed a suit for specific performance of the agreement before the learned Civil Court, which is still pending adjudication; that vide order dated 10.06.2019, the learned Civil

Court granted an injunctive relief with respect to the vehicle in question; that a huge amount of Rs.39,00,000/- was paid by the petitioner and his father to Mehmoon Khan Niazi for purchasing the vehicle in presence of respondent No.2; that the matter between the parties is of a civil nature; that the learned Judicial Magistrate, vide order dated 18.06.2019, granted bail to the co-accused, Mehmoon Khan Niazi; and that the petitioner is also entitled to the concession of bail on the principle of consistency. Learned counsel has prayed for the bail petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned counsel for the complainant, assisted by learned State Counsel, opposed the bail petition by stating that the petitioner is nominated in the F.I.R.; that the co-accused Tariq Joyia took the car bearing registration No.AGF-643, Honda Civic, on rent from the complainant @ Rs.8,000/- per day; that the said accused instead of returning the vehicle in question to the complainant handed over the same to co-accused, Mehmoon Khan Niazi, who had pledged the said vehicle to the present petitioner against an amount of Rs.12,50,000/-; that the complainant's vehicle in question was illegally retained by the petitioner; that the petitioner in connivance with the other co-accused committed criminal breach of trust; that although learned Judicial Magistrate, vide order dated 18.06.2019, granted bail to the co-accused, Mehmoon Khan Niazi, however, the complainant filed an application for cancellation of the bail granted to said co-

accused; that learned Additional Sessions Judge should have examined the record properly, and the bail granting order should have been recalled since the co-accused was involved in the commission of the alleged offence; that the petitioner is not entitled to be released on the principle of consistency as the learned Judicial Magistrate while allowing bail to co-accused failed to appreciate the material available on record. Learned counsel prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

6. The contents of the F.I.R. show that the complainant was running the business of Rent A Car and Auto Decoration under the name and style of "*Qureshi Auto Decoration*", and he rented out motor car, i.e. Honda Civic bearing registration No.AGF-643 to co-accused Tariq Joya on 22.02.2019 @ Rs.8,000/- per day. As per the F.I.R., the said co-accused neither returned the said car nor paid the rental charges. Furthermore, it was reported in the F.I.R. that that co-accused Tariq Joya handed over the vehicle in question to one Mehmoon Khan Niazi, who pledged the same to the present petitioner against an amount of Rs.12,50,000/-.

7. It has been noticed that although the petitioner is nominated in the FIR, yet the fact remains that there is an unexplained delay of more than three months in lodging the FIR, which *prima facie* shows that the FIR has been got registered after due deliberation and consultation. Furthermore, according to the

FIR, the vehicle in question was taken on rent by co-accused Tariq Joya from the complainant. Co-accused Tariq Joya appears to be the main culprit, who apparently committed criminal breach of trust. Learned counsel for the petitioner has laid much emphasis on the ground that the petitioner is entitled to be released on the principle of parity as the co-accused Mehmood Khan Niazi from whom the petitioner had taken the possession of the vehicle in question was granted bail by the learned Judicial Magistrate, vide order dated 18.06.2019. The contents of the F.I.R. show that the role ascribed to the present petitioner is more or less similar to that of co-accused, who have been granted bail by the learned Judicial Magistrate, therefore, the petitioner is also entitled to the grant of pre-arrest bail.

8. Since the co-accused has been granted bail by the learned Trial Court, therefore, by applying the principle of consistency, I hold that the petitioner is also entitled to the concession of bail. Resultantly, pre-arrest bail already granted to the petitioner, vide order dated 11.07.2019, is confirmed on the basis of bail bonds already tendered by him.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*