

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.350-B/2019
Mohsin Ali
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.
	03.06.2019	Syed Abaid Ullah Shah, Advocate for the petitioner Malik Awais Haider, learned State Counsel with Ghulam Abbas Khan, A.S.I.

Through the instant criminal miscellaneous application, the petitioner, Mohsin Ali S/o Muhammad Zubair, seeks bail after arrest in case F.I.R. No.380, dated 04.09.2018, under Sections 395 and 412 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Golra, Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Trial Court, vide orders dated 25.04.2019 and 14.05.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the accused/petitioner submits that the accused/petitioner is neither nominated in the F.I.R. nor has the description of his features been mentioned; that there was a substantial delay in lodging the F.I.R.; that the identification parade was not conducted in accordance with law; that during the investigation, nothing has been recovered from the accused/petitioner; that recovery, if any, has been planted by the police and the same is violative of mandatory provisions of Section 103 Cr.P.C.; that the case against the accused/petitioner is one of further inquiry within the meaning of Section 497(2)

of the Cr.P.C.; and that the petitioner is behind bars since his arrest and is no more required by the police for further investigation. Learned counsel prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned State Counsel opposed the bail petition by stating that although the petitioner is not nominated in the F.I.R., but during the course of identification parade, he was rightly identified by the complainant; that during the investigation, a gold chain and a pair of gold earrings alleged to have been stolen were recovered from the house of co-accused Umair Ashraf; that the alleged offences fall in the prohibitory clause of Section 497 Cr.P.C.; that there is sufficient material available on the record to connect the accused/petitioner with the commission of alleged crime; and that the accused/petitioner is a habitual offender and is also involved in other cases of similar nature. Learned State Counsel prayed for the bail petition to be dismissed.

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

6. Brief facts as stated in the FIR are that on 03.09.2018, at about 9:30 p.m., the accused/petitioner along with his co-accused entered the house of the complainant and on gun point committed *dacoity* and looted cash amounting to Rs.90,000/-, a pair of gold bangles, tops, earrings, gold chain and two finger rings (all weighing six *tolas* of gold) from the complainant's son and wife. In the F.I.R. it is also mentioned that the accused persons on show of weapons also

snatched the purse of the complainant's nephew (Yasir Kamal) and deprived him of his cash amount, identity card, student card, ATM card. Thereafter, the accused persons snatched the purse of the complainant's nephew (Natiq Haider) and deprived him of his identity card, student card and A.T.M. Card. It is further reported in the FIR that the accused persons also snatched the identity card as well as mobile phones along with SIM cards (six in number) from the complainant's daughter namely, Mst. Rukhsar Ali. In the meantime, the complainant and his friend came to the house. The complainant's friend was outside the main gate. When the complainant entered into the main gate of his house, the accused persons captured him and snatched his purse and deprived him of his cash amounting to Rs.30,000/-, original identity card, driving license, ATM cards, armed license 12 bore and mobile phone along with SIM card. In the FIR, it is also mentioned that the accused persons also snatched the purse of the complainant's friend and deprived him of cash amounting to Rs.14,000/-, driving license, cross-cheque amounting to Rs.75,000/-. The accused persons also snatched the keys of the vehicle of the complainant's friend and after boarding the vehicle (i.e. 2.O.D. Toyota Corolla) fled away.

7. Perusal of the record shows that on 08.10.2018, the petitioner was arrested in case FIR No.428, dated 03.10.2018, offence under Sections 395 and 412 P.P.C. registered at Police Station Golra, Islamabad. During the investigation in the said case, the petitioner disclosed that the jewelry items alleged to have been stolen in the FIR in question had been distributed between him and co-

accused namely, Umair Ashraf, Adnan Arif, Nouman Ali, Ali Arsalan, Nasir Ali alias Kalay Khan. Furthermore, on the pointation of the accused/petitioner, stolen items (i.e. golden chain and a pair of earrings) were recovered from the house of co-accused Umair Ashraf. Recovery memo appended with the record shows the partial recovery of stolen items i.e. golden chain and a pair of earrings). Recovery of stolen items, on the pointation of the petitioner from the house of co-accused Umair Ashraf, *prima-facie* connects him with the commission of alleged crime. The record further shows that the accused/petitioner is also involved in other criminal cases of similar nature, as such he *prima- facie* appears to be a habitual offender. Given the heinous nature of the offence alleged to have been committed by the accused/petitioner and the fact that he has been involved in other cases of similar nature, and the recoveries having been made from him, I am not inclined to accept this bail petition, which is accordingly dismissed. However, the learned Trial Court shall conclude the trial at the earliest. Needless to observe that the observations made herein shall not influence the learned Trial Court in giving its decision at the conclusion of the case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*