

JUDGEMENT SHEET.
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.918-B of 2020

MANSOOR KHAN.

Versus

THE STATE AND ANOTHER.

Petitioner by: *Dr. M. Saleem Chishti, Advocate*

State by: *Mr. Talat Rizwan, State Counsel.*
Mr. Mohsin, ASI.

Complainant by: *Syed Riaz Hussain, Advocate.*

Date of decision: **27.08.2020**

LUBNA SALEEM PERVEZ; J. Petitioner Mansoor Khan s/o Qazi Ahmed seeks post arrest bail in case FIR No.297/19, dated 12.09.2019, u/s 395, 412, 400 & 109 PPC, registered with P.S Khanna, Islamabad.

2. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed, vide order dated 16.03.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge (East), Islamabad, vide order dated 08.08.2020; hence, this petition for bail after arrest.

3. The brief facts of the case are that the Petitioner along with four other co-accused committed theft by entering into the farm house of the Complainant and robbed watches, Gold Ornaments, Debit Cards of HBL and Bank Al Falah, Nine Driving Licences and arms from the house of Complainant and also took away 500 Euros, 300 Dollars and an amount of Rs. Five Lac Forty Thousand (Rs. 5,40,000/-). Accused while fleeing from the scene took MP-5 Gun from complainant's Guard and also complainant's vehicle, White Colored Corolla, registration No. ADT/016, which was later on found from the Iqbal Town, Express Highway, Islamabad. Age of three of the accused persons was reported to be about 30 years, whereas, two were aging between 80 to 85 Years; one of the accused was short heighted with blue eyes, whereas, attire of other four accused was not mentioned,

however, it was apprised that three of the accused persons were wearing gloves.

4. Learned counsel for Petitioner submitted that Petitioner has falsely been implicated in the instant case and story narrated in the FIR is concocted and ill-founded which is aimed at ulterior motives; that petitioner is not nominated in the FIR nor any role has been attributed to the petitioner as the FIR was registered against five unknown persons; that attire of the accused is also not mentioned in the FIR; that the identification parade has been conducted completely in derogation of relevant rules as same has been conducted after 3 three months of the occurrence and prior to it petitioner was shown to the complainant and other witnesses; that neither the complainant nor his brother nor his father or any family member were present at the time of identification parade although they were the eye witnesses; that objection of the petitioner at the time of identification parade have not been recorded; that at the time of identification parade no role has been ascribed to the petitioner; that name of the chowkidar has not been mentioned in the FIR, moreover, his statement u/s 161 Cr.P.C has been recorded on 30.11.2019, after 78 days of the occurrence; that prosecution's case is that the accused entered the farm house of the petitioner through the boundary wall, whereas, two of the accused are stated to be of 80 to 85 years and it is not believable that persons of this age can jump from the boundary wall. Learned counsel further submitted that the alleged recovery on the pointation of petitioner is also a planted one; that the recovery has been alleged to be made through a thickly populated area but no witness from locality has been associated during recovery proceedings; that investigation in the case has completed and challan has also been submitted before the Court thus, petitioner is no more required for investigation; that the petitioner has been arrested on 02.12.2019; that the investigation has been completed, therefore, there is also no possibility of tempering with the record; that there is no previous conviction and there is no question of abscondence of the petitioner; that co-accused namely Qaiser has already been granted bail by the Court of learned Additional Sessions Judge (East), Islamabad, vide order dated 11.01.2020, therefore, following the rule of consistency petitioner is also entitled for grant of bail. Learned counsel in support of his contentions

placed reliance on the case law reported as *Azhar Mehmood and others Versus The State* (2017 SCMR 135), *State through Advocate General, Sindh, Karachi Vs. Farman Hussain* (PLD 1995 Supreme Court 1), *Javed Khan alias Bacha Versus State* (2017 SCMR 524), *Mushtaq Ahmad alias Warraich Versus State* (2010 YLR 1060), *Gul Muhammad Versus State* (2010 PCrLJ 340), *Abid Mehmood Versus State* (2017 SCMR 728) and prayed for grant of bail to the petitioner.

5. Conversely, learned counsel for Complainant and learned State Counsel, present along with I.O of the case opposed the present petition and submitted that petitioner is an Afghan National and belongs to a notorious Ghani Gang which is involved in similar kind of offences of robbery and dacoity; that petitioner after commission of offence went to Afghanistan and has been arrested when entered Pakistan to commit another dacoity; that on petitioner's pointation MP-5 short gun, gold bangle, one wrist watch, two diamond rings, one set of gold tops, one gold chain with pendant, one ruby gold bracelet and 300 American Dollars stolen from the complainant's farm house have also been recovered; that since, the petitioner is an Afghan National, therefore, there are ample chances of his abscondance, if enlarged on bail; that role of co-accused Muhammad Qaisar who has been granted bail is totally different from the present accused, therefore, rule of consistency is not applicable in petitioner's case; that challan has already been submitted and trial is to be completed soon which has been delayed due to Covid-19 Pandemic; that the offence mentioned in the FIR falls within prohibitory clause of Section 497 Cr.P.C; that although Petitioner was not initially nominated in the FIR but he has been identified during identification parade with specific role. While relying on the case law reported as *Asif Ayub Versus State* (2010 SCMR 1735), *Muhammad Arshad Versus The State* (2005 SCMR 756), *Jehanzeb alias Bhobi Versus The State* (2002 SCMR 1380) and *Muhammad Ismail Versus Muhammad Rafique* (1989 PLD 585) prayed for dismissal of present bail petition.

6. I have heard learned Counsel for parties as well as learned State Counsel and have also perused the record.

7. The perusal of record reveals that initially the FIR was registered against five unknown accused, whereas, present petitioner was identified by Security Guard of the Complainant at the time of identification parade conducted on 13.12.2019. It is very strange that at the time of identification parade neither the complainant nor his brother and father or any of the family members were present who in-fact were the sufferers and the eye witnesses of the happening. Moreover, there is an unexplained delay of eight days in conducting the identification parade as the petitioner was arrested on 05.12.2019 and in such a situation, possibility of the witness having seen the appellant prior to the identification conducted cannot be ruled out. The alleged recovery on the petitioner's pointation has been made from his residence stated to be a rented premises but neither the statement of Land Lord nor any rent agreement is on record; the house is situated at Khalid Bin Waleed Road, Pindorian which is a thickly populated area but no independent witness from the vicinity has been involved as witness of the recovery proceedings. As per prosecution story the accused entered the farm house by trespassing the boundary wall, whereas, from the contents of the FIR it is apparent that age of two of the nominated accused is stated to be between 80 to 85 years and it is not understandable that how a person of 80 to 85 years of age can jump from a high wall. At the time of registration of FIR name of the Security Guard present at the Farm House was also not mentioned, however, later on during investigation a person namely Abdul Qudoos has been introduced as the Security Guard, who has identified the petitioner as accused; further, his statement u/s 161 has been recorded after 78 days of the occurrence is also contrary to the procedure provided under the law. All the above said facts create doubts in the prosecution story and makes case of the petitioner of further inquiry. It has now a settled law that even for purposes of bail, law is not to be stretched in favour of the prosecution and if any doubt arises, it must go to the benefit of the accused. The cases relied upon are **"Amir vs. The State" (PLD 1972 SC 277)**, **"Shabbiran Bibi vs. The State" (2018 P Cr. L J 788)** and **"Syed Hassan Ali Shah vs. The State" (2019 P Cr. L J Note 159)** then it has been held in case reported as **"Zaigham Ashraf vs. The State" (2016 SCMR 2018)** that "for getting the relief of bail accused only had to show that the evidence/material collected by the prosecution

and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case then he was entitled to avail the benefits of it”.

8. In addition to above admittedly, Petitioner is previously non-convict. He is behind the bars since 05.12.2019. Investigation of the case is complete and the Petitioner is no more required for further investigation and nobody can be kept in jail for an indefinite period provided his further incarceration in jail would not serve any useful purpose. Furthermore, mere heinousness of offence is no ground to refuse bail to the accused, who otherwise becomes entitle for this concession.

9. For what has been discussed above, this petition is accepted and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE