

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.671-B/2020**

**ABDUL WASIT AND ANOTHER**  
Versus  
**THE STATE AND ANOTHER.**

*Petitioner by:* Mr. Ajmal Khan Khattak, Advocate.  
*Complainant by:* Mr. Liaqat Ali Tareen, Advocate.  
*State by:* Ms. Bushra Tariq Raja, State Counsel.  
Mr. Waseem, A.S.I.  
*Date of Hearing:* 11.05.2020.

-----

**LUBNA SALEEM PERVEZ; J:** Through instant petition, the petitioner seeks post arrest bail in case FIR No.36/2020, dated 02.02.2020, registered for offences under section 380/411 PPC, at Police Station Secretariat, Islamabad.

2. Facts of the case are that the complainant Administrative Officer SCPBA filed written complaint on 08.01.2020, regarding theft of complete panel of generator/brackets and two generator batteries (630-KVA) having estimated value of Rs. 1,500,000/- from SCBPA Hostel/complex, 56-A Attaturk Avenue, near State Bank of Pakistan, Sector G-5/2, Islamabad, by unknown/unidentified persons. The CCTV cameras though installed in the premises but were not in working condition at the time of offence.

3. Learned counsel for the petitioners argued that the petitioners are juveniles and innocent persons and has not committed any offence; that the case against the petitioners is false, frivolous and concocted as the junk and scrap of discarded wires have been given to the petitioners as they are poor garbage pickers; that the petitioners are not nominated directly in the FIR; that there is unexplained delay of more than 20 days in lodging of FIR; that there is no incriminating material available with the prosecution so as to connect the petitioners with the offence; that nothing has been recovered from their possession; that no identification parade mandatory as per law has been held; that the alleged offence falls within the non-prohibitory clause of Section 497

Cr.P.C; that petitioners are first offenders and have no previous criminal record; that the case is of further inquiry; that they are no more required for further investigation. Thus, learned counsel prayed that the petitioners are legally entitled for admission to bail. Learned counsel placed reliance on the judgments titled as Mumtaz alias Bholi and another vs. State [PLJ 2004 Cr.C. (Lahore) 633], Lalzada alias Lal Khan vs. The State (2012 YLR 864 Islamabad), Kamran Haider vs. The State (1996 PCr.LJ 1902) and Sher Ahmad vs. The State (PLD 1993 Peshawar 104).

4. On the other hand, learned counsel for the complainant submitted that there is no delay in registering the case on behalf of the complainant side as they have filed written complaint to the concerned police station as soon as the theft of panel of generator/brackets and two generator batteries (630-KVA) came to the knowledge i.e. on 08.01.2020 and the delay in registering FIR by the concerned police officers is not their fault; that recovery has been effected on the pointation of the accused; that the argument on behalf of the petitioner that the scrap material was given to the petitioners is incorrect as the expensive copper wires of generators were stolen from the premises of the SCBAP Hostel; that the accused petitioners are Afghan refugees and their identity card have been issued by the Ministry of SAFRON and UNHCR respectively; the challan in this case has been completed and would be filed soon; that the offence committed by the petitioners is non-bailable; that there is no personal enmity of the complainant as well as of the prosecution with the petitioners; that it is apprehended that the petitioners, if granted bail, may abscond, therefore, he prayed for dismissal of present petition as the petitioners under the circumstances are not entitled for concession of bail.

5. Arguments heard. Record perused.

6. After going through the record produced by the prosecution it transpires that one Mr. Hassan Abbasi, Electrical Engineer, employed at SCPBA Hostel reported the matter to the Secretary Supreme Court Bar Association to register a case against unknown persons for theft of panel of generator/brackets and two generator batteries (630-KVA) installed in the hostel, having estimated value of Rs. 1,500,000/-. Record reveals that another case of theft of generator

cables worth Rs. 2,000,000/- from the SCBAP Hostel was also registered vide FIR No. 221/2019. The CCTV cameras installed in the premises were operative at that time which recorded the incident and as stated by the respondent the accused/petitioners were visible in the footages. While the first FIR No.221/2019, was pending the present FIR was lodged. As per record the CCTV camera at the time of second incident of theft was not in working condition. It appears that the accused/petitioners were identified and arrested on 02.02.2020, with the help of CCTV footages recorded at the time of first theft reported vide FIR No. 221/2019. The record further reveals that during investigation the accused/petitioners admitted both the offences and on their pointation recoveries of cutter and five burnt wires were effected from the naala near parade ground. The accused are Afghan refugees and as per their expired identity cards, accused Abdul Wasit at the time of offence was aged 17 years and accused Taus Shoukat Ullah was about 18 years old. Record has been perused keeping in view the guiding principles settled by the Hon'ble Supreme Court in case titled as **Tariq Bashir vs. The State (PLD 1995 SC 34)** which transpires that the petitioners are not previously convicted; that the challan has been completed and they are no more required for further investigation; that there is no apprehension of tempering of record; that the alleged offence falls under non-prohibitory clause of section 497 Cr.P.C. and the Hon'ble Lahore High Court in case of **Kamran Haider vs. The State (1996 PCr.LJ 1902)** has allowed bail to the accused registered for offences u/s 379/411 PPC where the offences were not punishable with imprisonment for life or ten years and the accused was not previously convicted. Further the Hon'ble Supreme Court of Pakistan has granted bail to the accused in case titled **Arsalan Masih and others Vs. The State & others reported as (2019 SCMR 1152)**, offence u/s 380, 457 & 411 PPC, while holding that offences under Section 380 & 411, P.P.C. do not fall within the prohibition contained in S. 497, Cr.P.C. and in such like cases bail was a rule and refusal was an exception. Therefore, I am of the view that on the basis of tentative assessment and in view of the above cited judgment the accused/petitioners are entitled for bail. However, the accused/petitioners are Afghan refugees and there is likelihood of their abscondence as apprehended by the complainant and prosecution,

therefore, under the circumstances the accused/petitioners are admitted to post arrest bail, subject to furnishing of bail bonds in the sum of Rs. 200,000/- (Rupees two lac), with one local surety, by each petitioner, in the like amount to the satisfaction of learned Trial Court. The petitioners are further directed to appear on each and every date of hearing of the case before Trial Court and also assure their attendance before the concerned I.O, fortnightly.

7. The instant petition is allowed in the manner indicated above.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**Adnan/\***