

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.855-B /2020

Naqeeb Ullah Vs The State & another

Serial No. of order/ proceeding.	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
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31.08.2020

Mr. Muhammad Shahzad Siddique, Advocate for petitioner.
Mr. Muhammad Sheraz, Advocate for respondent No.2.
Mr. Zohaib Hassan Gondal, State counsel with Shamas Inspector & Adnan ASI.

GHULAM AZAM QAMBRANI, J.

The petitioner [Naqeeb Ullah] seeks post arrest bail in case FIR No. 436/2019, dated 03.09.2019, under sections 392, 411 PPC, registered at Police Station Golra Sharif, Islamabad.

2. Brief facts of the case are that on the written report of the complainant [Waheed Gul], above referred F.I.R was lodged against unknown accused persons stating therein that suddenly four persons armed with pistol entered into his house. The complainant tried to catch one of them and during scuffle the identity card showing name as Naqeeb Ullah was fallen and found from the spot. They started searching their house and on gun point, they snatched away Rs.4,50,000/-, 30 US dollars, five dirhams, two ladies rings etc and made their escape good in a white coloured car.

3. The petitioner applied for post arrest bail before the learned Court of Judicial Magistrate Section-30, Islamabad- West, which, was rejected vide order dated 12.02.2020. Thereafter, the petitioner/ accused applied for bail after arrest before the learned Additional Sessions Judge-West, Islamabad, which was also dismissed vide order dated 07.03.2020.

4. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been

implicated in this case; that the allegations levelled in the F.I.R are false; that on 20.08.2019, the petitioner was involved in case F.I.R No. 98 dated 20.08.2019 registered at Golra Sharif, Islamabad, wherein also it was alleged that during scuffle the purse of one of the culprit fell down, which was of Naqib Ullah Khan; that the F.I.R has been lodged with malafide intention and ulterior motives; that the offence does not fall under the prohibitory clause of Section 497 Cr.P.C; that the petitioner is previously non-convict and case of present petitioner falls within the ambit of further inquiry; that no identification parade has been conducted. Further contended that the petitioner is behind the bars since his arrest; that the investigation of the case has been completed and petitioner is no more required for further investigation. Lastly prayed for acceptance of bail petition.

5. On the other hand, learned counsel for complainant assisted by learned State counsel vehemently opposed the grant of bail to the petitioner contending that the alleged offence is non-bailable one and punishment of the same is upto ten years; that the petitioner is a habitual offender; that the petitioner has committed a heinous offence and punishment of the same falls within the prohibitory clause, therefore, he is not entitled for the concession of grant of bail. Lastly urged for dismissal of the petition.

6. I have heard the arguments of learned counsel for the petitioner, State Counsel and have perused the material available on record with their able assistance.

7. Perusal of the record reveals that the complainant has mentioned four culprits, who have allegedly entered into his house and committed dacoity. The petitioner was nominated just on the basis of copy of CNIC on the name of petitioner which was allegedly found in the house of the complainant. The physical features and specific role has not been attributed to any of the culprit. The identification

parade has not been conducted. Admittedly, the petitioner was not known to the complainant and other eye witnesses present at the house of complainant, in these circumstances it was obligatory to put the petitioner on identification test through prosecution witnesses, the Investigation Officer has failed to discharge his responsibility. The denomination of snatched currency notes have not been mentioned in the F.I.R. The alleged recovery of Rs.3000/- and 30 US Dollars after lapse of one month casts doubt upon the prosecution story, therefore, in the above circumstances bail cannot be refused to the petitioner on the ground of seriousness of offence. Prima facie, the case against the petitioner requires further inquiry as contemplated under Section 497 (2) Cr.P.C. At this stage, deeper appreciation of material is available on record is neither desirable nor permissible. The guilt of accused is yet to be determined by the learned trial Court after recording of the evidence. The Hon'ble Supreme Court of Pakistan in the case reported as "Manzoor & four others Vs The State" [PLD 1972 SC 81], wherein it has been held as under:-

" It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

8. So far as the contention of the learned State counsel that similar nature of cases have already

been registered against the petitioner is concerned, there is no previous record of the petitioner to have been convicted, as such, he cannot be treated as hardened criminal and it cannot be a ground to withhold the concession of bail. Reliance in this regard is placed upon the case reported as "Babar Hussain Vs. The State and another" (2020 SCMR 871) wherein it has been held as under:-

As far as the contention of learned Law Officer that the petitioner is involved in six other criminal cases would not disentitle him from the relief sought for as learned Law Officer frankly conceded that petitioner has not been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance in this regard is placed upon cases titled as "Moundar and others v. The State" (PLD 1990 SC 934) and "Muhammad Rafique v. The State" (1997 SCMR 412).

9. For what has been discussed above, I allow the petition and direct the petitioner to be released on bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (Two lacs) with one surety and P.R bond of the like amount to the satisfaction of learned trial Court.

10. It is needless to mention here that the observations made hereinabove are tentative in nature and shall not design to influence the trial.

(GHULAM AZAM QAMBRANI)
JUDGE

S.Akhtar