

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 569/BC/2019.

Waris Khan

Versus

Muhammad Naveed Abbasi, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.10.2019.	Ch. Naeem Ali Gujjar, Advocate for petitioner. Barrister Ayesha Siddique Khan, State Counsel. Mr. Munawar Abbasi, Advocate alongwith respondent No.1. Imran, S.I. P.S. Bhara Kahu, Islamabad.

Through this Crl. Misc. petition, the petitioner has prayed for cancellation of pre-arrest bail granted to respondent No.1 vide order dated 15.07.2019, passed by learned Additional Sessions Judge (East), Islamabad, in case FIR No.246, dated 18.06.2019, U/S 506(ii), 447, 380, 148, 149 PPC, P.S. Bhara Kahu, Islamabad.

2. Brief facts referred in the instant case are that complainant Waris Khan has got lodged the FIR with the allegations that on 11.05.2019 at about 03:00 a.m. in the early morning when his chowkidar had gone to nearby market for sehri purpose, Naveed Abbasi/ respondent No.1 alongwith 04 unknown persons armed with weapons broke the lock of the main gate and stole the articles lying in the constructed room in plot of the complainant situated in Khasra No.449, Bhara Kahu, Islamabad and have also extended life threats to the complainant's chowkidar and his son who came later on.

3. Learned counsel for the petitioner contends that respondent No.1 was granted pre-arrest bail by the Court of Additional Sessions Judge, Islamabad, vide order dated 15.07.2019 without considering the law on the subject and even question of malafide and further inquiry was not highlighted.

4. Conversely, learned counsel for respondent No.1 contends that respondent No.1 is innocent and has falsely been implicated in this case; that plot was transferred in the name of complainant through one Muhammad Zubair and even mutation was sanctioned but complete payment was not made to respondent No.1 and as such Civil Suit titled Muhammad Zubair Zia V/s. Muhammad Naveed Abbasi, etc and second Civil Suit titled Muhammad Naveed Abbasi V/s. Muhammad Zubair Zia, etc. are also pending before the competent Court and as such matter in issue relates to the civil dispute which has been converted into criminal case.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner being complainant of the case FIR No.246, dated 18.06.2019, U/S 506(ii), 447, 380, 148, 149 PPC, P.S. Bhara Kahu, Islamabad, has nominated respondent No.1 as accused with specific role of breaking the locks and removing the articles lying in the room of his compound plot situated in khasra No.449 and even extended the life threats to the chowkidar of complainant.

7. The tentative assessment of record reveals that respondent No.1 acknowledged that he has transferred the plot in question to the petitioner through one Zubair and contends that respondent No.1 has not received the complete sale consideration which is Rs.50,00,000/- and only payment which was transferred to him is Rs.20,00,000/- and for remaining amount of Rs.30,00,000/- cheque was given by petitioner which was dishonoured. Respondent No.1 was confronted as to whether he has any dispute with the complainant which he denies but he has taken a specific stance that he has not received the complete sale consideration, although as per petitioner's stance he has paid sale consideration, where-after the plot was transferred. Record further reveals that presence of respondent No.1 is visible from the statement of witnesses and as such by granting pre-arrest bail by the Court of Additional Sessions Judge investigation officer has been restrained from recovery of incriminating evidence which otherwise effects the prosecution case.

8. I have gone through the order passed by learned Additional Sessions Judge (East), Islamabad, who has granted pre-arrest bail to respondent No.1 only on the ground that offences mentioned in the FIR do not fall within the purview of Section 497 Cr.P.C. However, question of further inquiry and malafide are not discussed which are key factors for the grant of pre-arrest bail, as such the order passed by learned

Additional Sessions Judge, Islamabad is perverse, illegal and contrary to the law as held in PLD 1994 SC 133 (Sarwar Sultan Vs. The State) and 2007 SCMR 1607 (Ch. Waris Ali Vs. State).

9. I.O has yet to recover the stolen articles as well as Suzuki pickup which has been used for the purpose of transportation of stolen articles from the room of complainant therefore, respondent No.1 has failed to point out any malafide of the complainant in this matter. Hence petitioner has demonstrated from record that the order for grant of pre-arrest bail is illegal, therefore, impugned order is hereby set aside and instant petition is allowed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid