

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 36-B of 2020.

Muhammad Akash.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
03.02.2020.	Mr Muhammad Arif Khan, Advocate for the petitioner. Mr Rabi-bin-Tariq, State Counsel. Mr Shakeel, ASI with record.	

The petitioner Muhammad Akash son of Mushtaq Khan has sought post arrest bail in case F.I.R. No. 468, dated 24.11.2018, registered under sections 395 and 412 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Lohi Bheer, Islamabad.

2. Brief facts as narrated in the FIR are that on 23.11.2018 at about 05:20 p.m., six unknown persons while armed with weapons forcibly entered into the house of the complainant. They took away cash and valuable items. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; no specific role has been attributed to the present petitioner; there is no direct or indirect evidence against the petitioner; the petitioner has not committed the alleged offences; the petitioner has been falsely involved in the instant case with malafide intention; the petitioner is innocent; the petitioner is not nominated in the FIR; no incriminating material has been recovered from the petitioner; the petitioner is previously non-convict; allegations against the petitioner are false and baseless; the petitioner has

been incarcerated for more than six months; identification parade was not conducted in accordance with law; story as alleged in the FIR is concocted and baseless; the petitioner has no concern whatsoever with the alleged occurrence; the offences are not attracted against the petitioner; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; allegations against the petitioner require further inquiry; the offences do not fall within the prohibitory clause of section 497 Cr.P.C; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; mere recovery does not constitute an offence under section 395 PPC, hence prayed for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Shakeel, ASI. They have opposed the grant of bail. It has been argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the petitioner and other co-accused; the petitioner is also involved in seventeen other criminal cases of the same nature; the petitioner in the instant case was arrested after conducting proper identification parade; the petitioner is a habitual offender and, if he is released on bail, he would repeat the offence; the conduct of the accused brings his case within the exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 Cr.P.C as there are seventeen other criminal cases of the same nature registered against him. They have prayed for dismissal of the instant bail petition. Reliance has been placed on the case of *"Shameel Ahmed versus The State"* reported as [2009 SCMR 174], in support of the contention that registration of other cases would disentitle the petitioner for the grant of bail on the ground that he is a "habitual offender".

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record shows that the occurrence had taken place on 23.11.2018, whereas the present petitioner was arrested in the instant case on 16.07.2019 i.e. after a delay of almost eight months. The record further reveals that the petitioner was arrested during investigation relating to another case i.e. FIR no. 209 of 2019, dated 13.07.2019, registered under section 13/20/65 of Arms Ordinance, 1965 at Police Station Lohi Bheer, Islamabad. Identification parade was conducted on 14.07.2019 but it, prima facie, appears that no specific role was attributed to the petitioner. Whether or not the identification parade conducted in the instant case is sustainable needs further probe. Moreover, the items stated to have been recovered from the petitioner are not mentioned in the FIR. This factor makes it a case of further probe. Investigation qua the petitioner has been completed and he is no more required for the purposes thereof. The petitioner has been incarcerated for more than six months in the instant case. In the circumstances, the case of the petitioner comes within the ambit of further probe. His continued custody is not likely to serve any beneficial purpose at this stage as the investigation has been completed. Nothing has been placed on record to form an opinion regarding apprehension that the petitioner may abscond or tamper with the prosecution evidence. This Court is, therefore, of the opinion that the petitioner is entitled to bail.

7. It has been aptly observed by the august Supreme Court in the case of *"Manzoor and 04 others versus The State"* reported as [PLD 1972 S.C. 81] as follows:

"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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court. The petitioner will be released provided his incarceration is not required in some other case.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**