

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 804-B/2019

Asim Jahangir.

VS

The State and another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.

08.01.2020.

**Mr. Musharaf Khan, Advocate for petitioner.
Raja Waqar Ahmed, Advocate for the complainant.
Mr. Sadaqat Ali Jehangir, State Counsel.
Asim Zaidi, ASI, CIA and Talat, ASI P.S.
Golra Sharif, with record.**

The petitioner (Asim Jahangir son of Jahangir Khan) seeks bail after arrest in the case F.I.R No. 110/2019 dated 07.03.2019, under Section 395, 412 P.P.C, registered with Police Station Golra Sharif, Islamabad.

2. Precisely, prosecution case is that on 07.03.2019, the petitioner along with his co-accused allegedly committed dacoity at the house of the complainant. The complainant got recorded his supplementary statement, wherein he nominated the accused persons namely Ayaz Khan s/o Gull Muhammad, Qasim Khan, Asim Khan, Kareem Khan Afghani and Gull Alam Afghani stating that when he was coming out of his house, the nominated accused persons were staring at him and further given the details of the looted ornaments as well as cash amount of Rs. 55,00,000 (fifty five lac).

3. The petitioner moved bail application before the learned Trial Court which was

dismissed vide order dated 18.11.2019, by the learned Magistrate, Sec-30, Islamabad. Thereafter, he moved bail petition before the learned Sessions Judge (West), Islamabad, which was also dismissed vide order dated 03.12.2019, hence the instant petition.

4. Learned counsel for the petitioner contended that the complainant is not the eye witness of the alleged occurrence; that no identification parade of the accused persons was held; that no recovery has been effected from the petitioner; that initially F.I.R. was registered under Section 392 P.P.C. while in the contents of said F.I.R. it has been mentioned that two unknown persons entered the house of the complainant on the basis whereof Section 392 P.P.C. was mentioned in the circumstances; that co-accused has been granted bail on the same set of evidence, therefore, principle of consistency is attracted and calls for further inquiry.

5. Conversely, learned counsel for the complainant as well as learned State Counsel vehemently opposed the arguments advanced by the learned counsel for petitioner contending that there is no malafide on the part of complainant to involve the petitioner in the present case. Further contended that in-fact two persons entered inside the house, while the

three accused persons were standing outside the house at the time of alleged occurrence; that the petitioner is a habitual offender; that number of F.I.Rs have been registered against him; that the petitioner remained absconder for a long time; that during the investigation the accused got recovered some gold ornaments and five files of Capital Smart City, Islamabad, from his house, lying in the iron box.

6. Arguments heard, record perused.

7. Briefly, the story narrated by the complainant is that he is a Stamp Vendor at F-8 Kutchery as well as deals in the business of property; that on 07.03.2019, at about 07:00 a.m. he left for F-8 Katchari, his wife and children were present at home; that at about 09:20 a.m. his wife informed him through phone that two young boys, duly armed with pistol, had entered into their house and on the show of force they looted the valuable ornaments and cash amount. On receiving such information, he rushed towards his home and upon checking, he found that certain amount and ornaments lying in the almirah were missing. It is pertinent to mention here that thereafter, the complainant (Muhammad Shakeel Khan) got recorded his supplementary statement and nominated the accused persons namely Ayaz Khan s/o Gull Muhammad, Qasim Khan, Asim Khan, Kareem

Khan Afghani and Gull Alam Afghani and also mentioned that an amount of Rs.55,00,000/-, one cheque book of his account, another cheque book of the account of his wife, five file of Capital Smart City, allotment letter and mentioned the detail of the gold ornaments. But it has been noticed that no identification parade has been conducted during the course of investigation to identify the real culprits and the identification test with regard to the stolen articles was necessary in this case, but the same has not been done, which makes the case of the petitioner one of further inquiry.

8. Perusal of record further reveals that originally the FIR was lodged under Section 392 PPC but during the investigation, Section 392 PPC was deleted and Sections 395 and 412 PPC were added. The complainant is not an eye witness of the alleged occurrence; that the eye witnesses of the alleged occurrence were his wife and children. Furthermore, no specific role has been assigned to any of the accused person including the petitioner nor the presence of the petitioner has been shown at the time of alleged occurrence.

9. The record further reveals that co-accused persons were also arrested and recovery of cash and gold ornaments has been made from co-accused persons namely Ayaz and

Kareem. Learned counsel for the petitioner provided the certified copy of bail granting order in favour of one of the co-accused namely Ayaz Khan, passed by the learned Additional Sessions Judge-IX (West), Islamabad, which has been placed on record. Perusal of the same shows that the above said accused was granted bail on the ground that no identification parade has been conducted, but bail was refused to the present petitioner on the ground that he remained absconder for a long period. So far as absconsion of the petitioner is concerned, it is well settled principle of law that bail can be granted to the accused, if he has a good case for grant of bail on merits, mere absconsion would not come in any way while granting bail to the accused petitioner. Reliance is placed on the judgment reported as "Mitho Pitafi vs. The State" **(2009 SCMR 299)**.

10. The Hon'ble Apex Court, while dealing with an identical proposition has laid down the following principles for grant of bail in the judgment reported as "The State vs. Rafiq Ahmed Channa" **(2010 SCMR 580):-**

- a) *Whether there is or is not a reasonable ground for believing that the accused has committed the offence with which he is charged?*
- b) *Whether the case requires further enquiry into the guilt of commission of non-bailable offence within the scope of section 497(2), Cr.P.C.?*
- c) *Whether the accused is minor, woman, sick or infirm person?*

- d) The nature and gravity of the charge.*
- e) The severity or degree of the punishment which might follow in the circumstances of the case on conviction.*
- f) The danger of the accused absconding if he is released on bail.*
- g) The danger of witnesses being tampered with.*
- h) The danger of the alleged offence being continued or repeated.*
- i) The character, the means and standing of the accused.*
- j) An opportunity to the accused to prepare his defence.*
- k) The accused has already been in jail for a considerable period and the trial is not likely to conclude in near future at least.*
- l) Bail should never be withheld as a punishment.*

11. Record also reveals that the other co-accused person namely Ayaz Khan has been granted bail on the same set of evidence, therefore, on the principle of consistency the petitioner is entitled to the grant of bail. Challan of the case has been submitted and the trial is at initial stage. The tentative assessment of the record reveals that it is a case of further inquiry while deeper appreciation of evidence is not permissible at bail stage. No purpose would be served to the prosecution if the accused remains behind the bars for an indefinite period. It is important to remember that bail cannot 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.

12. For the forgoing reasons, instant petition is **allowed** and petitioner is admitted to post arrest bail subject to his furnishing bail bond in the sum of Rs. 4,00,000 (four lac only) with two sureties in the like amount to the satisfaction of the learned Trial Court.

13. 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

A. Rahman Abbasi