

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 207-B of 2020.

Qasim Ahmed.

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.
-------------------------------	--------------------	--

03.04.2020. Raja Shiraz Ahmed Janjua, Advocate for the petitioner.
Mr Ashiq Shah, Inspector/I.O. with record.

The petitioner Qasim Ahmed son of Amjad Hussain has sought post arrest bail in case F.I.R. No. 148, dated 23.04.2017, registered under sections 394/376/337-A(i)/337-F(i)/412/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Sabzimandi, Islamabad.

2. Brief facts as alleged in the FIR are that on 23.04.2017 three unknown persons while armed with firearms entered in the house of the complainant. It is further alleged that they committed rape with the complainant and injured her sister-in-law and took away cash and other valuables. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; story as narrated in the FIR is false, frivolous, vexatious and baseless; the petitioner is not nominated in the FIR; no specific role has been attributed to the petitioner; there is no direct or indirect evidence against the petitioner; no incriminating material was recovered from the petitioner;

recovery if any if fake and planted; the petitioner has no concern whatsoever with the alleged offences; there is no DNA test on record; the petitioner has been incarcerated for more than ten months; the petitioner is also entitled to the concession of bail on statutory ground; the petitioner has been discharged from thirteen criminal cases out of fifteen being falsely involved in the cases; investigation qua the petitioner has been completed and he is no more required for the purpose thereof; offences are not attracted against the petitioner; there is delay in conducting the identification parade; allegation against the petitioner is that of further inquiry; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the co-accused namely, Azhar Ahmed has been enlarged on bail and the case of the petitioner is at par with him, keeping in view the rule of consistency; mere recovery does not constitute an offence under section 394 PPC; hence urges for the grant of post arrest bail.

4. Ashiq Shah, Inspector appeared and produced record of the case. The instant petition has been opposed. It was argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the petitioner; the petitioner is a hardened and desperate and habitual criminal, if he is released on bail, he will repeat the offence; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and the trial is to commence shortly; case against the petitioner falls within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner is also involved in many other cases of the same nature and prayed for dismissal of the instant bail petition.

5. The learned counsel for the petitioner has been heard and record perused.

6. Perusal of record reveals that the petitioner was not nominated in the FIR and no specific role has been attributed to him. The alleged occurrence had taken place on 23.04.2017, whereas the identification parade was conducted after a period of two years and the petitioner was arrested in the instant case on 18.05.2019 i.e. after delay of two years. Description of the petitioner has not been mentioned in the FIR. The co-accused has been extended concession of bail vide order, dated 27.06.2019 and the Investigating Officer could not show how the case of the petitioner is distinguishable. The role of the petitioner in the instant case requires further probe. Whether or not the identification parade was conducted in accordance with law also needs further probe. The report under section 173 Cr.P.C. has been submitted before the learned trial Court. A plain reading of the FIR in the instant case shows that further probe is required whether ingredients of the offences mentioned in the case are fulfilled. Investigation qua the petitioner has been completed and he is no more required for the purposes thereof. The role of the petitioner definitely requires further probe. The petitioner has been incarcerated for more than ten months. Further incarceration of the petitioner will not serve any useful purpose. The co-accused of the petitioner has been enlarged on bail. In the facts and circumstances of the instant case, the continued incarceration of the petitioner is not likely to serve any beneficial purpose at this stage.

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".

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.

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/**