

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 691-B of 2022**

Mst. Nausheen Saeed

***Versus***

The State and another.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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08.06.2022

Mr. Muhammad Ahmad Pansota, Advocate  
for the petitioner along with petitioner in  
person.

Mr. Hasnain Haider, Advocate for the  
respondent No. 2 / CDA.

Mr. Jamil Fayaz, Learned State Counsel.

Sajid Cheema, D.S.P (Legal).

Muhammad Wajid, A.S.I.

Through the instant petition, the  
petitioner seeks bail before arrest in case  
F.I.R. No. 402, dated 17.05.2022, offences  
under Section 435, 188 P.P.C., 26 of Forest  
Act, 1927, 5 (Islamabad Preservation of  
Landscape Ordinance, 1966), 11/19 of  
Environment Protection Act, 1997, 26 of  
Islamabad Wildlife (Protection,  
Preservation, Conservation and  
Management) Ordinance, 1979,  
registered at Police Station Kohsar,  
Islamabad.

02. Earlier, petition for pre-arrest bail filed by the petitioner / accused was dismissed by the Court of learned Additional Sessions Judge, West-Islamabad, vide order dated 27.05.2022.

03. It is alleged that a video went viral on social media (tiktok) wherein, the petitioner has allegedly recorded video shoot by committing mischief by fire in the Margalla Hills National Park, Islamabad and caused loss to plants, grass and animals etc., hence the instant FIR.

04. Learned counsel for the petitioner / accused, *inter-alia* contends that the petitioner / accused is innocent; there is no evidence available against her regarding commission of offences mentioned in the FIR; sections leveled in the FIR are not attracted; no recovery is liable to be effected from her; she has already joined the police investigation, hence she is entitled for grant of bail before arrest.

05. Conversely, learned State Counsel assisted by learned counsel for Capital Development Authority has controverted the arguments advanced by learned counsel for the petitioner / accused and has stated that sufficient evidence is available against the petitioner / accused; she is specifically nominated in the FIR; she has committed a heinous crime, hence she is not entitled for the concession of bail.

06. Arguments advanced by learned counsel for the petitioner / accused, learned State Counsel assisted by learned Counsel for respondent No.2 have been heard and record has been perused with their able assistance.

07. Most of the sections leveled in the FIR are bailable; section 188 P.P.C. is not bailable; under section 195 Cr.P.C. FIR u/s 188 P.P.C. can only be registered on written complaint of the public servant concerned, or of some other public servant to whom he is subordinate.

08. In the instant case, section 144 Cr.P.C. was imposed by Lt.(R) Rana M. Waqas Anwar, PAS / Addl. District Magistrate, Islamabad on 18.03.2022, wherein, campfire in the Margallah Hills National Park, Islamabad was prohibited. Instant FIR has neither been registered on the complainant of above named public servant nor there is any allegation that the petitioner has committed an act of campfire in the Margallah Hills National Park, Islamabad. FIR has been registered on the complainant of Mr. Ijaz ul Ahsan s/o Allah Dita, Environment Department of CDA, Islamabad.

09. Only important and relevant section in the FIR is section 435 P.P.C. which is punishable with imprisonment of either description for a term which shall not be less than two years, not more than seven years and shall also be liable to fine. For the ready reference, Section 435 P.P.C. is reproduced as under:

**"435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which [shall not be less than two years nor more than] seven years and shall also be liable to fine."**

10. Only allegation in the FIR is that video went viral on social media platform (TikTok), wherein, the petitioner / accused has recorded her video shoot in forest of Margallah Hills National Park, Islamabad. When the D.S.P (legal) and I.O were confronted, they frankly conceded that there is no evidence available against her that she herself has set fire in the area. Only evidence available is TikTok video in which the petitioner / accused can be seen

by shooting video in front of fire in jungle.

11. It is provided in section 435 P.P.C. that whoever will thereby cause, damage to any property to the "amount of one hundred rupees or upwards". When confronted, the Investigating Officer frankly conceded that there is no evidence on record that value of bushes etc. was Rs.100/- or upwards.

12. As far as other sections leveled in the FIR are concerned, there is no other evidence available against the petitioner / accused except TikTok video. It has been held by the Hon'ble Supreme Court of Pakistan that, if a case has been registered with malafide intention and by ulterior motives and no sufficient evidence is available against the accused and if arrest of the accused is intended by the prosecution, out of malafide and by ulterior motives, bail before arrest can be confirmed. Reliance in this regard is placed upon the cases titled as **Shahzada Qaiser Arfat @ Qaiser Vs. The State, etc. (PLD 2021 SC 708), Khair Muhammad**

**and another Vs. The State through  
P.G. Punjab and another (2021 SCMR  
130), Khalil Ahmed Soomro and  
others Vs. The State (PLD 2017  
Supreme Court 730).**

13. This is a bail before arrest and only tentative assessment is required at this stage. No incriminating evidence is available against the petitioner / accused except a TikTok video which also does not show that when and where it was recorded.

14. At this stage, I am of the view that if the petitioner / accused being a female is sent behind the bars, it will cause irreparable loss to her person and reputation.

15. For the reasons recorded above, this petition is **allowed** and ad-interim pre-arrest bail already granted to petitioner / accused vide order dated 30.05.2022, is hereby **confirmed** subject to furnishing of fresh bail bonds in the sum of **Rs. 1,00,000/-** (One Hundred Thousand

Rupees only) with one surety in the like amount to the satisfaction of learned trial Court.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Ahmed Sheikh