

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.839-B/2020

NISAR ALI
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Ikhtlaq Ahmed Awan, Advocate.

Complainant by: In person.

State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Mushtaq, A.S.I.

Date of Hearing: 23.07.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, the petitioner Nisar Ali seeks post arrest bail in case FIR No.374/2018, dated 20.08.2018, for offences under section 394/337-F(iii)/411 PPC, registered at Police Station Koral, Islamabad.

2. Necessary facts as per record are that the FIR was registered by the complainant for being robbed by three unknown persons one of whom shot fires on the complainant which caused injury on his left leg and while fleeing from the crime scene, the unknown persons took away Samsung S4 mobile valuing Rs. 10,000/-. As per record the present accused arrested in another criminal case FIR No. 234/2018, dated 08.10.2018, u/s 13/20/65 AO, Police Station Shahzad Town, Islamabad, during investigation disclosed his involvement of committing the offence in the present case along with co-accused Zeeshan and Rashid Masih. Thus on his admission he has been named as accused in the present FIR No.374/2018.

3. The Petitioner/accused earlier applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed, vide order dated 15.10.2019. Thereafter his similar request was also declined by the learned Additional Sessions Judge (East), Islamabad, vide order dated 02.11.2019; hence, this petition for bail after arrest.

4. Learned counsel for the petitioner submitted that the petitioner has been falsely involved in the present case on the statement of co-accused namely Rashid Masih during investigation in another FIR No. 234/2018, dated 08.10.2018; that recovery of Samsung mobile has also been effected on Rashid Masih's pointation from his house and not from the present accused/petitioner; that no specific role has been mentioned against the

petitioner in the FIR; that the present petitioner was arrested in another FIR No. 234/2018, u/s 13/20/65 AO, on 08.10.2018; that there are contradiction in the statement of complainant with regard to recovery memo and identification parade; that the identification parade is based on *malafide* and pre-arrangement; that the petitioner is not previously convicted; that the case is of further inquiry; that the investigation to the extent of petitioner has been completed and he is no more required by the police; that challan has been submitted and the charge against the petitioner/accused has been framed. Learned counsel submitted that the alleged offences do not fall within the ambit of prohibitory clause of section 497 Cr.PC and since, no recovery has been effected from the petitioner; he has not shot the complainant and; contradictions in the statement of complainant are enough grounds for granting bail to the petitioner/accused.

5. Learned State counsel as well as complainant in person along with the I.O. of the case furnished the police record and submitted that the accused petitioner along with other co-accused operates as a gang and is involved in many other similar offences; that though the petitioner has been arrested in another FIR but he has admitted the commission of offence in the present FIR and on the pointation of one of the co-accused, the Samsung mobile/case property snatched from the complainant has been recovered; that as per record the petitioner accused during the commission of the offence was riding the bike, whereas, the other co-accused had shot on the complainant and snatched his mobile; that no *malafide* can be alleged in identification parade as the complainant never saw the accused/petitioner prior to the commission of offence and there exist no previous enmity between them; that in view of the facts and circumstances, the petitioner/accused is not entitled for concession of bail.

6. Heard arguments of learned Counsel for the petitioner, the complainant as well as learned State Counsel and have also perused the police record submitted during the hearing of the case.

7. Perusal of the record submitted by the Investigating officer shows that FIR was registered by the complainant for snatching of mobile and causing injury on resistance against the unknown persons, whereas, the petitioner along with co-accused has been nominated for the offence in the present FIR on the basis of admission during investigation of another FIR No. 234/2018, dated 08.10.2018, u/s 13/20/65 A.O., registered at Police Station Shahzad Town, Islamabad. As per the contents of the said FIR a 30 bore pistol was recovered on personal search of accused petitioner when he was arrested on 08.10.2018, on spy information by the police from Shahzad Town. Record

shows that the complainant in FIR No. 374/2018, has also been shot with a 30 bore pistol, in view of the empties recovered from the crime scene, which empties and the 30 bore pistol later recovered from the accused are said to have been sent for forensic examination, however, forensic report in this regard is not available on the police record furnished to the Court and in absence of same it cannot be ascertained that the weapon recovered from the accused petitioner is the same that was used in commission of offence subject matter of instant FIR. Moreover, there is nothing on record against the present petitioner except the statement of co-accused u/s 161 Cr.P.C. and extra judicial confession made by the petitioner during investigation before the police which according to the settled law is the weakest type of evidence veracity whereof can be determined at the time of trial. Moreover, in the present case role of the petitioner during commission of offence is unclear and it is also well settled that question of vicarious liability can be determined at the time of trial after recording of evidence instead at the time of bail as deeper appreciation of record is not permissible at bail stage rather only tentative assessment is to be made. As regards contention of learned counsel for the complainant that the petitioner has been declared guilty during investigation, is concerned it is suffice to say that ipse dixit of Police is not binding upon the Court and even for the purpose of bail, law is not to be stretched in favour of the prosecution. Guidance in this regard is sought from "**Abid Ali alias Ali v. The State**" (2011 SCMR 161). Thus, in light of said observations, case of the accused becomes one of further inquiry under Section 497(2) Cr.P.C. Reliance In this regard is placed on the case law reported as **Khiyal Saba and another Vs. The State and another** (2020 SCMR 340) and **Muhammad Junaid ur Rehman Vs. the State and another** (2020 PCr.LJ 310). Further, challan has already been submitted and charge has been framed, whereas, petitioner is incarcerated since, his arrest on 08.10.2018, in FIR No. 234/2018 i.e. more than one year and seven months and the trial is still under process and not a single witness has so far been examined. It has been observed by the august Supreme Court of Pakistan in the case of "**Manzoor and 4 others v. the State**" (PLD 1972 SC 81) that:-

"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"

Since, the challan in the present case has already been submitted and the charge has been framed, therefore, there is no likelihood of tempering with the record by the petitioner/accused. Further there is no apprehension of the petitioner/accused for abscondence. Though the petitioner has the history of involvement in criminal cases, however, he has not been convicted in any

offence so far and it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as ***Muhammad Roshan Vs. The State (2016 MLD 392)*** and ***Muhammad Sarwar Vs. The State and others (2016 YLR Note 110)***.

8. For the foregoing reasons, I am of the considered view that the accused petitioner is entitled for concession of bail. Reliance in this regard may also be usefully made to the following principles laid down by the Hon'ble Supreme Court in the case of ***Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)***:-

“The bail will be declined only in extra ordinary and exceptional cases, for example-

- (a) Where there is likelihood of abscondence of the accused;
- (b) Where there is apprehension of the accused tampering with the prosecution evidence;
- (c) Where there is danger of the offence being repeated if the accused is released on bail; and
- (d) Where the accused is a previous convict.

9. For what has been discussed above, this petition is accepted and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees Two Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

Junaid