

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.746-B/2019
Muhammad Bahadur alias Muhammad Shabeer
Versus
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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05.12.2019	Mr. Ali Hussain Bhatti, Advocate for the petitioner Ms. Rabi Bin Tariq, learned State Counsel with Iftikhar A.S.I.	
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Through the instant criminal miscellaneous petition, the petitioner, Muhammad Bahadur *alias* Muhammad Shabeer S/o Muhammad Sadiq, seeks bail after-arrest in case F.I.R.No.306, dated 22.07.2019, under Sections 380, 411, 457 and 34 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Kohsar, Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 11.10.2019 and 08.11.2019. Thereafter, the petitioner has filed the instant petition for post-arrest bail.

3. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case with *malafide* intentions and ulterior motives; that no recovery of stolen/lost jewelery items etc. was ever effected from the petitioner in spite of his being remanded in police custody for over six days; that the offences under Sections 380 and 411 P.P.C. carry penalties of 07 years' and 03 years' imprisonment; that both the offences Sections 380 and 411 P.P.C. with which the petitioner stands charged do not fall within the prohibitory clause of Section 497 Cr.P.C.; that there is no evidence collected by the prosecution to connect the petitioner with the commission of alleged offence under Section 457 P.P.C., which has

been added with the purpose to make the offences look more serious and grave than they really are; that the petitioner has been behind bars for over three and a half months and is no more required for further investigation; and that the case against the petitioner is one of further inquiry within the meaning of Section 497(2) of the Cr.P.C. Learned counsel has prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned State Counsel opposed the grant of post-arrest bail, contending that the petitioner is involved in other cases of similar nature. Learned State Counsel made reference to four other F.I.R.s, including F.I.R.No.306, registered at police station Margalla, and F.I.R.No.577, registered at police station Margalla; that a diamond set (necklace and ear rings), a Rolex Watch, etc. alleged to have been stolen from the complainant's brother's house were recovered from the petitioner's possession; that the offence under Section 457 P.P.C. carries a penalty of 14 years' imprisonment and as such the petitioner is not entitled to the discretionary relief of grant of bail. Learned State Counsel has prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. Brief facts as stated in the F.I.R. are that the complainant namely, Lft. (Retd.) Col. Saadi Faraz, informed that theft had taken place at his brother's residence (i.e. House No.1 situated at Parbat Road Sector F-7/3, Islamabad) on 22.07.2019. According to the F.I.R., the complainant's brother along with his family left the house for a walk at 7.15 p.m. leaving behind a servant/Cook, Khursheed. In the short

absence of about one and a half hour, Khursheed's cousin also visited him. It is also reported in the F.I.R. that the said Khursheed's cousin and may be another accomplice also visited the said house in absence of housemates. On 21.07.2019, the complainant's brother and family did not notice that theft had taken place. On the very next day, i.e. 22.07.2019, the complainant's brother and family found the cupboard's lock broken and valuables (i.e. a diamond set, a Ruby's diamond ring, a gold necklace, a gold *madrasi* karha, a diamond bracelet, a gold set, gold rings, a Rolex watch and Apple watch) were missing. The complainant reported the matter at once to the local police and accordingly the F.I.R. in question was registered against the culprits.

7. Admittedly, the petitioner is not directly nominated in the F.I.R. and was arrested in this case on 26.08.2019. The record shows that soon after the petitioner's arrest, he was produced before the Magistrate concerned and remained on physical remand for six days for the purposes of investigation. On 02.09.2019, the petitioner was sent to judicial lock-up. "*Fard Maqboozqi*" appended with the record shows that besides a Rado watch, stolen gold items (i.e. necklace, two earrings, one chain, two sets of studs, one bangle/*karha*, total weighing 6/7 *tolas*) and one set of earrings were recovered from the possession of the petitioner. Furthermore, the stolen items alleged to have been recovered from the petitioner apparently matched with the items mentioned in identification memo appended with the record. These stolen items have already been handed over to the complainant on *superdari* as revealed through the order dated 06.09.2019 passed by the learned Judicial Magistrate Section-30, Islamabad. Even otherwise, the petitioner, being involved in

several other cases of similar nature appears to be a habitual offender and in some of the cases he was declared as guilty/convict.

8. Taking a tentative assessment of the available record, the accused/petitioner is, *prima-facie*, connected with the commission of alleged offence, and is thus not entitled to the concession of bail. The bail petition, being bereft of any merits, stands dismissed accordingly. The observations made hereinabove are tentative in nature, and shall have no impact on the merits of the case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*