

## **ORDER SHEET.**

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

**Crl. Misc. No.274-BC/2019.**

Abida Qasim

Versus

The State etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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20.06.2019. Syed Khurram Shahzad, Advocate for the petitioner.  
Mr. Fareed Hussain Kaif, State Counsel.  
Malik Ikhlaz Ahmed Awan, Advocate alongwith respondents  
No.2 & 3.  
Shafaqat S.I, P.S Lohi Bher, Islamabad alongwith record.

Through instant petition, the petitioner has prayed for  
cancellation of pre-arrest bail granted to respondents No.2 & 3  
by learned Additional Sessions Judge-V (East) Islamabad vide  
order dated 25.04.2019 in case FIR No.115, dated 10.04.2019,  
U/S 354/452/380 PPC, P.S Lohi Bher, Islamabad.

2. Learned counsel for the petitioner contends that learned  
Additional Sessions Judge while granting pre-arrest bail to the  
respondents wrongly considered ground of further inquiry and  
did not adhere to the question of malafide; that the respondents  
have been attributed direct role of trespassing and committing  
theft and by granting pre-arrest bail, the investigation has been  
withheld, which would prejudice the prosecution case.

3. Conversely, learned counsel for respondents No.2 & 3  
contends that the allegations leveled in the FIR are not based on  
true facts and no such incident took place; that respondents No2  
& 3 and the petitioner have business dispute, which has been  
converted into criminal case; that the petitioner is habitual in  
lodging of different FIRs against different individuals for the

purpose of blackmailing and harassment and the instant FIR has been lodged with same intention.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that respondents No.2 & 3 are nominated accused in case FIR No.115, dated 10.04.2019, U/S 354/452/380 PPC, P.S Lohi Bher, Islamabad lodged by the petitioner with the allegations that on 08.04.2019, at about 12:30 p.m, respondents No.2 & 3 forcibly entered into apartment of the petitioner and snatched 18 Tolas gold jewelry, two passports, ID Card, Samsung Mobile Phone and also physically assaulted the petitioner. Respondents No.2 & 3 applied for their pre-arrest bail, which was confirmed vide impugned order dated 15.04.2019 by learned Additional Sessions Judge-V (East) Islamabad with following findings:-

*"It is alleged in the FIR that accused, husband and wife, came to the apartment of complainant where after badly beating the complainant, accused also took away jewelry, passport, mobile phone etc. It is noteworthy that proceedings u/s 107/151 Cr.P.C have already been initiated against the accused qua the same occurrence. Furthermore, the complainant has provided receipt of purchase of jewelry amounting to Rs.17,80,000/-. However, during the course of investigation, IO has verified the fact of purchase said jewelry from the concerned jeweler, who stated the accused Muhammad Imtiaz has purchased said jewelry. It was also noteworthy that as per statement of jeweler Khizar Ali, out of Rs.17,80,000/-, the accused Muhammad Imtiaz has paid Rs.17,15,000/- in cash and for the balance Rs.65000/-, the accused has given a guarantee cheque to the jeweler. Furthermore, the motive has been described in the FIR, wherein it was alleged that accused attacked the complainant because the complainant had bought them an accidental vehicle. However, record is silent with regard to transaction of any vehicle between complainant and accused. The stated facts and circumstances make the case of present accused/petitioners one of further inquiry and probe. In addition, the bonafide of complainant, prima face, also appears questionable."*

6. The above referred findings are silent qua the malafide intention on part of the complainant/police, which is key factor for grant of pre-arrest bail. Although certain astonishing facts have been brought on the record, which reflect that petitioner/complainant is also involved in 12 criminal cases. However, from tentative assessment of record, it transpires that respondents No.2 & 3 are nominated in the FIR and specific role is attributed to them. Allegations of house tress pass and committing theft have been leveled by the complainant against the accused.

7. It is settled principle of law that pre-arrest bail can be granted to an accused in exceptional circumstances especially in cases where falsity of his involvement is visible and is surfaced on record. Arrest for ulterior motives such as humiliation and unjustified harassment is also consideration for grant of pre-arrest bail but in the instant case all these ingredients have not been considered by learned Additional Sessions Judge while passing the impugned order.

8. In view of the above reasons, the instant petition is allowed, impugned order dated 25.04.2019 is set aside. Pre-arrest bail application of respondents No.2 & 3 shall be deemed to be pending. The matter is remanded to learned Sessions Judge (East) Islamabad, who after hearing learned counsel for the parties shall decid pre-arrest bail applications of respondents No.2 & 3 afresh in accordance with law. All the concerned are directed to appear before the learned Sessions Judge (East) Islamabad on 27.06.2019.

(MOHSIN AKHTAR KAZANI)  
JUDGE