

Form No: HCJD/C-121.  
**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 180-B of 2022**

Asif Yaqoob  
Versus  
The State & 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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28.02.2022	Ch. Adeel Ahmed Khatana, Advocate for the petitioner. Malik Abdur Rehman, State Counsel. Mr. Zulfiqar Ali, S.I, P.S I-9 Islamabad,
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The petitioner has sought post arrest bail in case F.I.R No. 433, dated 12.06.2021, registered under Sections 382 and 411 of Pakistan Penal Code, 1860 at Police Station I-9, Islamabad.

2. Brief facts as stated in the instant FIR lodged on the complaint of Fahad Khan Niazi are that on 12.06.2021 at about 06:00 pm while he was going on a motorcycle along with his sister, two unknown motorcyclists snatched a Redme Note Pro mobile phone and a purse with cash in the amount of Rs.25,000/- from the possession of his sister.

2. The learned counsel for the petitioner contended that the petitioner has been wrongly involved in the instant case. That the offence under section 411 of PPC does not fall within the prohibitory clause and section 382 of PPC is not attracted against the petitioner

in view of the facts as reflected in the FIR. That photos of the petitioner which were taken during his detention in police station were shown to the complainant and thereafter identification parade was conducted during which the petitioner was purportedly identified. That the identification parade was conducted in breach of law and the case of the petitioner fell within ambit of further inquiry. That no description of accused was mentioned in the FIR. That the alleged occurrence took place at night and there was no source of light at the place of occurrence. Thus, this was a case of false identification and implication. That the investigation has been completed and the petitioner is behind bars since his arrest and his further incarceration would not serve any purpose.

3. Learned State Counsel submitted that multiple FIRs have been registered against the petitioner but he was not convicted in any of them. That there was no previous enmity between the petitioner and the complainant and the identification parade was conducted in accordance with law. That Rs.15000/- out of snatched amount was recovered from the petitioner. That the case against the petitioner fell within the ambit of prohibitory

clause of section 497 of Cr.P.C. and the bail petition of the petitioner should be dismissed.

4. A plain reading of the FIR reflects that the complainant did not report that those accused in the FIR for committing theft were alleged to have made preparation for causing, death or hurt or restraint or had caused fear of death or hurt or restraint. The State has produced no additional record to establish that the petitioner is liable for an offence under section 382 of PPC. The other section involved i.e. section 411 does not fall within the prohibitory clause of section 497 of Cr.P.C. Thus, further probe is required to determine whether ingredients of the offences mentioned in the FIR are made out to the extent of the petitioner. The investigation in relation to the petitioner has been completed and is not required for such purpose anymore. The petitioner has been incarcerated since 04.11.2021. In the facts and circumstances of the instant case, the continuing incarceration of the petitioner pending trial would not serve the ends of justice.

5. It is a settled principle that an accused is to be deemed innocent until proven guilty. The right to liberty and dignity is also

protected under Articles 9 and 14 of the Constitution as is the right to a fair trial under Article 10-A. In the event that after a fair trial the accused are found to be innocent, there is no mechanism to offer restitution for their loss of liberty pending their trial. It has therefore been held by the august Supreme Court that bail cannot be denied as a punishment pending trial in **Manzoor and 4 others vs. The State (PLD 1972 SC 81)** in the following terms:

*"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. 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."*

6. On the basis of tentative assessment of the record produced, the learned counsel for the petitioner has made out a case for further inquiry into his guilt within the meaning of section 497(2) of Cr.P.C. Whether or not he is liable for the charges brought against him can

only be determined by the trial court after appreciating the evidence adduced before it. In view of the principles laid down by the august Supreme Court and the present facts and circumstances, this case does not attract the considerations on the basis of which bail ought to be denied to the petitioner.

7. In these facts and circumstances, the instant petition is **allowed** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one local surety in like amount to the satisfaction of the learned trial Court.

8. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

**(BABAR SATTAR)**  
**JUDGE**

*Saeed\**