

**ORDER SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 410-B/2021**

**Muhammad Ali**

**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>
(03)	07.05.2021	Mr. Sher Afzal Khan Marwat and Mr. Danish Akbar, Advocates for the petitioner / accused. Mr. Zumurd Khan, State Counsel. Habib Ullah, S.I. along with Mian Noor Ullah, S.I.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 551, dated 28.11.2020, offences U/S 467, 468, 471, 472, 411, 420 P.P.C., registered at police station Sabzi Mandi, Islamabad.

02. In the first round, post arrest bail of the petitioner in the instant case was rejected by learned Judicial Magistrate, Islamabad vide order dated 11.12.2020, learned Additional Sessions Judge vide order dated 14.01.2021 and by this Court vide order dated 27.01.2021.

03. In the second round, post arrest bail of the petitioner was rejected by the Court of learned Judicial Magistrate vide order dated 22.02.2021 and learned Additional Sessions Judge vide order dated 12.03.2021. Now this is second bail after arrest before this Court.

04. Brief facts of the case are that the petitioner / accused is allegedly a car lifter

involved in tempering the vehicles, preparing fake invoices and selling the same as applied for. On 28.11.2020 complainant / Habib Ullah, S.I, received a spy information, whereupon he constituted a raiding party and was present at IJP road near Toll Plaza. During checking, at about 02:05 p.m, a Corolla car bearing registration No. ICT-AJX-735 white color Model 2019 came there, wherein two persons were boarded who subsequently disclosed their names Farhad Hussain and Muhammad Ali (present petitioner). On examination, the engine and chassis numbers of the car were found tempered, whereas the car in question was found stolen property of case FIR No. 482/20 dated 12.09.2020 u/s 381-A PPC, registered at police station Morgah, Rawalpindi and the original registration number of the vehicle was APD-013. On further search of the car, articles used for tempering of engine and chassis numbers and for preparation of tempered number plates were also recovered. From the personal search of the accused one set of blank invoices and one set of complete invoices of serial No. A-429266, Engine No. Z-554533, Chassis No. NZE170R-4180395 were recovered, both the accused informed the police that they temper the stolen vehicles, prepare the fake invoices and sell the same in market, hence the instant FIR.

05. Learned counsel for the petitioner

contends that there is no evidence of tempering of vehicles against the petitioner/accused; he is previously non-convict and only recovery of the instruments used for tempering the vehicles does not constitute any offence; owner of the recovered vehicle is not the complainant of the FIR, whereas the recovered vehicle has already been handed over to its owner on *superdari*; investigation has been completed and the petitioner is no more required for further investigation and it is a fit case of further inquiry, Section 468 PPC is bailable and punishment of Section 467 PPC is 07 years and offence does not fall under prohibitory clause of section 497 Cr.P.C. Complainant of FIR No. 482/20, police station Morgah, Rawalpindi has given undertaking that his car was not tampered and he does not want to prosecute the petitioner. In daily dairies / ziminis dated 19.10.2020 and 20.10.2020, I.O of FIR No. 482/20 has mentioned that the car has already been recovered by Anti Car Lifting Cell of Islamabad police. Hence, the petitioner be enlarged on bail after arrest.

06. On the other hand learned state counsel has stated that the offence falls under the prohibitory clause of section 497 Cr.P.C and sufficient evidence is available against the petitioner / accused; challan has already been submitted before the Court; petitioner/accused has committed a heinous crime. He further contends that as earlier, bail after arrest of the

petitioner was dismissed and no fresh ground is available to the petitioner for the grant of post arrest bail, hence is not entitled for bail and prayed for dismissal of the petition.

07. I have considered the arguments advanced by learned counsel for the petitioner / accused, learned State Counsel on behalf of State and perused the record with their able assistance.

08. During the course of arguments, the petitioner / accused has produced photocopies of daily dairies / zimnis Nos. 19 dated 19.10.2020 and 20 dated 20.10.2020 of case registered vide FIR No. 482 dated 12.09.2020, offence 381-A, PPC, police station Morgah, Rawalpindi, wherein it is written that the vehicle mentioned in the FIR was already recovered by the Anti car lifting cell of Islamabad police. Learned counsel has also produced photocopy of FSL report vide LAB NO. 3082/2020, dated 30.11.2020 regarding Technical Examination of Chassis / Engines Number, wherein it is mentioned that chassis number of the vehicle AJX-735-ICT was the same before and after chemical treatment. Learned counsel for the petitioner has also produced copy of statement given by Muhammad Irfan Pasha / alleged complainant of FIR No. 482/2020, wherein it is mentioned that he does not want to initiate any proceeding against the petitioner / accused and no one has committed tampering

with his car. The copy of affidavit of Muhammad Irfan Pasha is also placed on record and on the basis of these grounds, petitioner has moved the instant second bail petition.

09. It is trite that the grounds available to the accused at the time of dismissal of earlier bail petition, whether argued or not and whether expressly dealt with in the order of dismissal or not, the same cannot be taken as a fresh ground in subsequent bail petition. The grounds of daily dairies dated 19.10.2020 and 20.10.2020 as well as report of Forensic Science Laboratory, dated 30.11.2020 were available to the petitioner at the time of arguing the bail application, which was dismissed vide order dated 27.01.2021, hence the petitioner cannot take these grounds in the second bail petition as these cannot be termed as fresh grounds. As far as the production of daily dairy is concerned, it is categorically mentioned in section 162 of Cr.P.C as under;-

***“162. Statements to police not to be signed: Use of such statements in evidence. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise or any part of such statement or record, be used for***

*any purpose save as hereinafter provided at any inquiry or trial in respect of any offence under investigation at the time when such statement was made (emphasis added).*

10. Hence, the arguments on the basis of daily dairies / zimnis dated 19.10.2020 and 20.10.2020 cannot be considered by this Court for the purpose of bail after arrest which has already been dismissed vide order dated 27.01.2021.

11. As far as the copy of statement of Muhammad Irfan Pasha / alleged complainant of FIR No. 482/2020 police station Morgah, Rawalpindi is concerned, he is not present in the Court to verify the contents of his undertaking / affidavit. There are many other allegations of serious nature leveled against the petitioner which disentitle him for the grant of bail after arrest.

12. It has been held by the Hon'ble Supreme Court in a case titled as ***"Nazir Ahmed and another V. The State and others"*** (PLD 2014 SC 241), that *"dismissal of an application for bail after attending to the merits of the case amounted to rejection of all the grounds available or in existence till the time of such dismissal whether such grounds were actually taken or urged or not and whether such grounds were expressly dealt with in the order of dismissal or not"*. It has been further held that *"in case of dismissal of an earlier application for*

*bail on the merits of the case a subsequent application for the same relief could be filed and entertained only if it was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of decision of the earlier application”.*

13. It has been laid down by the Hon’ble Supreme Court in a case titled as **“Muhammad Riaz V. The State”** (2002 SCMR 184), that *“while deciding the subsequent bail application, of course, the ground which was not urged although the same was available would not constitute a fresh ground justifying the filing of second bail application”*. Reliance is also placed upon cases titled as **“Amir Masih V. The State and another”** (2013 SCMR 1524) and **“Muhammad Aslam V. The State and others”** (PLD 2015 SC 41).

14. Section 467 PPC provides the punishment for life or imprisonment of either description of 10 years and fine, whereas Section 468 PPC, provides the punishment for either description of 07 years and fine and is not bailable, hence the offence falls under prohibitory clause of Section 497 Cr.P.C.

15. The petitioner is involved in 07 criminal cases / FIRs of similar nature. Many cars of other FIRs have also been recovered on the pointation of the petitioner / accused, challan has already been submitted in the Court.

16. It has been laid down by the Hon’ble

Supreme Court in 2020 SCMR 937, 2020 SCMR 594, 2020 SCMR 1182, 2017 SCMR 325 and 2016 SCMR 1447, that “*the accused is not entitled for the grant of bail after arrest in the offences falling under the prohibitory clause of Section 497 Cr.P.C*”. It has also been laid down by the Hon’ble Supreme Court in a case titled as “Rehmat Ullah Vs. State” (2011 SCMR 1332), that “*the Courts should not grant or cancel bail when the trial is in progress*”.

17. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out his case for grant of bail after arrest already dismissed on 27.01.2021 on the grounds of further inquiry / fresh ground as envisaged under section 497(2) Cr.P.C, consequently, the instant bail petition stands *dismissed*.

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

(TARIQ MEHMOOD JAHANGIRI)  
JUDGE

Bilal

Approved for reporting.