

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.478-B/2019

Saddam Hussain

Versus

The State

| 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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01.08.2019

M/s Muhammad Bilal Siddique and Kashif Ahmed Khan, Advocates for the petitioner
Mr. Sadaqat Ali Jahangir, learned State Counsel with Nawaz S.I. with Aamir A.S.I.
Malik Sajjad Ahmed Advocate for the complainant.

Through the instant criminal miscellaneous petition, the petitioner, Saddam Hussain S/o Jandad, seeks bail after arrest in case F.I.R. No.37, dated 24.01.2019, under Sections 395 and 412 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Tarnol, Islamabad.

2. Earlier the petitioner's similar requests seeking post-arrest bail were dismissed by the learned Judicial Magistrate and Additional Sessions Judge, Islamabad, vide orders dated 01.06.2019 and 25.06.2019, respectively.

3. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case with *malafide* intentions and ulterior motives; that there is a delay of almost 16 days in lodging the F.I.R.; that in the F.I.R., the complainant alleged that 3-4 persons committed the crime whereas in the supplementary statement, he alleged that 7-8 persons committed *dacoity*, that on the disclosure of co-accused, the petitioner has been implicated in this case; that the identification parade was conducted after 28 days of the petitioner's arrest; that no specific role has been attributed to the petitioner in the identification parade; that initially, the F.I.R. in question had been lodged under Section 392 P.P.C.

however, on the basis of the supplementary statement of the complainant, Section 392 P.P.C. was converted into Section 395 P.P.C. ; that no independent witness had been associated to witness the recovery; that the case against the accused/petitioner is one of further inquiry within the meaning of Section 497(2) of the Cr.P.C.; and that the petitioner is behind bars since his arrest and is not required by the police for further investigation. Learned counsel prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned counsel for the complainant, assisted by learned State Counsel, vehemently opposed the bail petition by stating that during the identification parade, the complainant had identified the petitioner as one of the accused who was alleged to have committed the *dacoity*; that on co-accused's disclosure, the petitioner was arrested; that after the petitioner's arrest, on his pointation, the stolen carpets were recovered; that the offences with which the petitioner has been charged fall within the prohibitory clause of Section 497 Cr.P.C.; that the delay in the identification parade was due to the petitioner's transfer from Peshawar; and that the petitioner is also involved in cases of similar nature. Learned counsel 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 on 08.01.2019, the complainant and the driver of the vehicle bearing registration No.GAL-8890, stopped at a tyre shop for checking the air pressure and at that stage, four unknown persons armed with 30 bore pistols came at the site and dragged the complainant and driver to the green belt and snatched the said

vehicle (Mazda), carpets, registration book of the said vehicle, route permit, three mobile phones and cash amounting to Rs.2,000/- and ran away. It was also reported in the F.I.R. that accused persons were talking to each other in *Pashtu* language and were about 25 to 30 years of age. The complainant was in search of the accused and their snatched items but on failure to trace them, he, on 24.01.2019, reported the matter to the police station.

7. The record shows that the F.I.R. in question was lodged on 24.01.2019 while the alleged occurrence took place on 08.01.2019. The petitioner was arrested in the F.I.R. in question on 26.03.2019 while he was in custody in case F.I.R. No.27, dated 18.01.2019, for offences under Sections 9-C and 15-A C.N.S.A. at Police Station Nowshera Cantt. The record further shows that pursuant to the request for the transfer of the petitioner from District Nowshera to District Islamabad made by Chief Commissioner Islamabad vide letter dated 01.04.2019 to the Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, learned Senior Civil Judge, Nowshera, vide order dated 10.04.2019, granted one day transit police custody and as a result the petitioner was transferred from District Nowshera to District Islamabad. On 11.04.2019, the petitioner was produced before the competent Court/*Ilalaqa* Magistrate at Islamabad. The said Court sent the petitioner to Adayala Jail, Rawalpindi for the purpose of identification parade. On 23.04.2019, an identification parade was conducted in which the petitioner was identified as one of the accused in the alleged *dacoity* on 08.01.2019. After the identification parade, the petitioner remained on physical remand for fourteen days and during the investigation, the petitioner was found involved in the alleged *dacoity*. Thus, the delay in conducting the identification parade

was due to the petitioner's transfer from District Nowshera to District Islamabad. Vide *zimini* No.25, dated 29.04.2019, the petitioner had disclosed that he along with his companions, including his cousin Azad Hussain and brother Iqbal Hussain sold the stolen carpet rolls to the owner of the Hammad Carpets, namely, Aashiq Ullah. Furthermore, recovery memo appended with the record shows that the carpet rolls (ten in number) had been recovered on the petitioner's pointation from the shop called Hammad Carpets, Peshawar. Even otherwise, the offence with which the petitioner has been charged falls within the prohibitory clause of Section 497 Cr.P.C. The record further shows the petitioner's involvement in three other cases, details whereof are as follows;

- i) F.I.R. No.27/19, offence under Section 9-C of C.N.S.A. registered at Police Station Nowshera Cantt
- ii) F.I.R. No.415/08, offences under Sections 324, 353, 148, 149 PPC and 13-XX-65 A.O. registered at Police Station Hayat Abad, Peshawar.
- iii) F.I.R. No.766/16, offence under Section 9-C of C.N.S.A. registered at Police Station Hayat Abad, Peshawar.

8. As mentioned above, only ten rolls of stolen carpets were recovered on the pointation of the petitioner, however, the complainant's vehicle as well as remaining stolen items are yet to be recovered, therefore, the petitioner is not entitled to the concession of bail. Consequently, the petitioner's post arrest bail petition is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*