

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Criminal Misc. No. 665-B/2020
Muhammad Asif
Vs
The State, etc

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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18.05.2020	Mr. Musharaf Khan Advocate for the petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Respondent No.2/complainant with Mr. Muhammad Zafar Khokhar Advocate, Anwar ASI, PS Ramna with Record:
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This is post-arrest bail petition by accused-petitioner (Muhammad Asif) in case FIR No.461, dated 24.12.2019, under Sections 379/411 PPC, Police Station Aabpara, Islamabad.

2. The record appended with the petition reveals that earlier bail petitions were rejected by the learned Judicial Magistrate Section 30 and the learned Additional Sessions Judge, Islamabad-West vide orders dated 14.04.2020 & 25.04.2020 respectively.

3. Learned counsel for the petitioner contends that there is no evidentiary value of the identification parade; that the recovery is fake; that requirements of Section 103 Cr.PC have not been complied with and that the offence does not fall within the ambit of prohibitory clause, therefore, petitioner is entitled to the concession of bail. Learned counsel placed reliance upon case law reported as *Tariq Bashir VS The State (PLD 1995 SC 34)*, *Muhammad Rafiq Vs The State (1997 SCMR 412)*, *Muhammad*

Abid Farooq Vs The State and another (2015 PCr.LJ 224) and Sher Alam Vs The State (2008 MLD 769).

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that the FIR was promptly lodged; that there is no chance of false implication; that petitioner was correctly identified by the wife of the complainant during identification parade, held immediately after his arrest; that 90% of the stolen property has been recovered from his possession that includes original CNICs of the complainant and his spouse besides ATM cards and the lady purse, allegedly stolen by the petitioner.

It is further argued that petitioner is involved in several other cases of like nature; challan has been submitted and trial is likely to commence. It is further argued that in the light of ***Tariq Bashir Case (Supra)*** the case of the petitioner falls within the ambit of exception and, therefore, disentitles him to the concession of bail. Learned counsel for the complainant relied upon case law reported as ***Muhammad Siddique Vs Imtiaz Begum and 2 others (2002 SCMR 442), Baqir Ali alias Asghar Vs The State through P.S. City Sakardu (2017 PCr.LJ Note 136) and Wahid Gul Vs The State (2011 YLR 2155).***

5. Arguments heard, record perused.

6. According to the contents of FIR, on 24.12.2019 at about 12:30 p.m. within the area of Aabpara Market, Islamabad an unknown person having 24/25 years age, wearing gray colour shalwar qameez with thin beard committed theft of lady purse from car No.EF-

880, Corola ELI, when the wife of the complainant was sitting in the car; the lady purse contained 5½ Tola gold ornaments, cash of Rs.5500/-, a lady wrist watch value Rs.8000/, two ATM debit card, one HBL credit card, driving license of wife of the complainant, some cosmetic articles and other papers.

7. Record reveals that the occurrence of 12:30 p.m. on 24.12.2019 was promptly reported to the police at about 05:05 p.m, in the meanwhile, complainant immediately called up Rescue-15 to report the incident and in addition, also brought the occurrence in the knowledge of President, Traders Union of Aabpara Market, leaving no chance of false implication. The petitioner was arrested on 22.02.2020 and was subjected to identification parade on 13.03.2020 wherein, the wife of the complainant, who was sitting in the car at the time of alleged occurrence, has correctly identified the petitioner. The petitioner did not raise any objection regarding his false implication at the time of identification parade.

8. The stolen articles i.e. lady purse containing three visa cards, original CNIC and driving license of the spouse of the complainant were also recovered, which are the same articles described in the FIR.

9. The facts of the case further reveal that the petitioner tactfully and deceitfully persuaded the lady for de-boarding the vehicle to see the tyre, and when she came out of the car, petitioner picked up the purse and fled away. The alleged episode, speaks about the

guilty mind of the petitioner that how he planned to commit the offence by deceiving an innocent lady. This *modus operandi* can also be witnessed from the contents of another FIR bearing No.17/2020, wherein the petitioner committed the same offence against another old aged lady in the same manner and style.

10. It is also a matter of record that petitioner is involved in following five other cases of like nature:-

1. FIR No.592, dated 18.12.2019, u/s 380, 420, 411 PPC, P.S. Bhara Kahu.
2. FIR No.593 dated 19.12.2019, u/s 380, 420, 411 PPC, P.S. Bhara Kahu.
3. FIR No.11 dated 04.01.2020, u/s 380 PPC, P.S. Bhara Kahu.
4. FIR No.21 dated 10.01.2020, u/s 380, 411 PPC, P.S. Bhara Kahu.
5. FIR No.17 dated 10.01.2020, u/s 379 PPC, P.S. Aabpara.

The petitioner, as manifest from the cases registered against him, appears to be a habitual offender and, therefore, in case of his release, the possibility of repetition of offence cannot be ruled out. It also speaks about the habitual conduct/routine of the petitioner, who has committed the offence by selecting two adjoining areas i.e. Aabpara and Bharakahu for his illegal activities and to fulfil his criminal designs. The Court while dealing with bail matters of such like offenders should be cognizant of the fact as to the nature of the offence, its consequences and impact on the society.

11. As per the Investigating Officer/record, the petitioner is an Afghan National, therefore, the chances of his escape are quite apparent and if he is released on bail, apprehension of his abscondence cannot be ruled out.

12. In case **Muhammad Siddiqui Vs Imtiaz Begum and 2 others (2002 SCMR 442)**, it is held that *“no one can claim bail as matter of right in non bailable offences, even when the offence does not fall within the ambit of prohibitory clause of section 497 Cr.PC.”* No malice or malafide on the part of complainant has been alleged. In case of *Wahid Gul Vs The State (2011 YLR 2155)*, the accused involved in the offence of theft was declined bail by observing that *“no apparent enmity appeared between the parties, nor the police had any malafidies against the accused.”*

13. The parameters laid down in **Tariq Bashir case (Supra)**, guides to hold that in non bailable offences falling in the second category where the punishment is provided for less than ten years, the grant of bail is a rule and refusal an exception. The exceptions provided therein include likelihood of abscondance and a danger of the offence being repeated. As mentioned above, these exceptions are attracted to the case of the petitioner. The case law relied upon by the learned counsel entail distinct facts and circumstances, therefore, do not help to the petitioner.

14. Admittedly, the challan has been submitted and the trial is likely to commence and in the light of case law reported as

Rehmatullah. Vs State (2011 SCMR 1332), the proper course for the court in such a situation, would be to direct the Trial Court to conclude the trial of the case within a specific period.

15. In the light of above, petitioner is not entitled to the concession of bail. Consequently, the instant post arrest bail petition is **dismissed**. The learned Trial Court is directed to conclude the trial preferably within a period of three months.

16. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran