

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

Criminal Misc. No. 634-B/2020
Mubashir
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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03.	23.04.2020	Mr. Shah Alam Khan Babar, Advocate for petitioner. Mr. Muhammad Bilal Ibrahim, State Counsel. Complainant in person. Muhammad Zubair ASI with record.
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This is post-arrest bail petition by accused-petitioner {Mubashir} in case FIR No.366 dated 23.09.2019, under Sections 392/411/34 PPC Police Station Sihala, Islamabad.

2. The record appended with the petition reveals that earlier bail petitions were rejected by the learned Judicial Magistrate Section 30 and learned Additional Sessions Judge/GBV Court, Islamabad-East respectively vide orders dated 16.11.2019 & 20.02.2020.

3. Learned counsel for the petitioner contends that the site plan shows that police check post is near the scene of crime and it is out of imagination that accused would commit such heinous crime on the main highway near the police post; that story narrated in the FIR is dubious, concocted one and when it is examined, at the end it creates serious doubts; it is alleged that accused party fired at the victim/ complainant four times while only two fire shots hit the bonnet of the vehicle; no direct role is attributed to the present petitioner and

the main role is of the co-accused, therefore, in the given circumstances, case of the petitioner falls within the ambit of further inquiry. By concluding his arguments, learned counsel placed reliance upon case law reported as *Abdul Razzaq Vs The State (1998 PCr.LJ 1802)*, *Tariq Zia Vs The State (2003 SCMR 958)*, *Shahid Ali Laghhari Vs The State (2014 PCr.LJ 427)*, *Allah Ditta Vs The State and another (2014 PCr.LJ 658)*, *Muhammad Siddique Vs The State (2014 PCr.LJ 1430)*, *Abdul Rauf and another Vs The State and another (2018 PCr.LJ 834)* and *Muhammad Saleem Vs The State and another (2003 MLD 145)*.

4. On the other hand, learned State Counsel argued that the FIR is promptly lodged; recovery of the motorbike allegedly used by the culprits was made at the spot; empties were also recovered; petitioner was duly identified by the complainant during identification parade which was conducted soon after the arrest of the petitioner; that petitioner was arrested on 07.10.2019 while identification parade was conducted on 15.10.2019 and the accused has not raised any objection at the time of identification parade; that petitioner is involved in other cases of like nature i.e. FIR No.405 dated 26.10.2019, under Sections 381-A/411/420 PPC, FIR No.406 dated 26.10.2019, under Section 13/20/65 A.O., FIR No.408 dated 28.10.2019, under Section 13/20/65 A.O., FIR No.115 dated 12.04.2019, under Section 324 PPC, FIR No.81, dated 11.03.2019, under Section 324/34 PPC, all registered at Police Station Sihala, Islamabad and FIR No.264 dated

19.08.2019, under Section 381 PPC, Police Station Lohi Bher, Islamabad.

Further contends that during physical remand, the robbed cell phones and the weapon of offence, allegedly used by the accused, were also recovered and a separate case under Section 13 of the Arms Ordinance, 1965 has also been registered against the petitioner; that keeping in view the contents of FIR, section 324 PPC could also be added; that challan has already been submitted on 08.11.2019 and trial is in progress.

It is also argued that after the occurrence, the accused got themselves medically treated from the Pakistan Institute of Medical Sciences-PIMS by mentioning their fake name and parentage and in case of release there is likelihood of repetition of offence, therefore, petitioner is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. According to the contents of FIR, on 23.09.2019 at about 05:15 a.m. while heading towards Rawalpindi from Rawat side on G.T. Road, within the area of Bahria Town Phase-VII, two boys riding on a motorbike bearing registration No.RIM-8964, emerged at the scene and stopped car of the complainant at gun point. The culprits allegedly snatched two mobile phones, cash Rs.4000/-, and other documents. During the chase by the complainant, near a U-turn, the culprits made two fire shots which hit the bonnet of the car and thereafter on U-turn, complainant hit the motorcycle with the car due

to which the culprits fell down, got injured and fled away leaving the motorcycle there.

7. The offence mentioned in the FIR is Section 392 PPC, which provides rigorous imprisonment for a term which may extend to ten years with fine and if the robbery is committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

8. The occurrence in this case had allegedly taken place on 23.09.2019 at about 05:15 a.m. on the main highway/ expressway within the area of P.S. Sihala, Islamabad and the sunrise time on that very day had been 05:56 a.m. therefore, apparently, the offence alleged entails punishment which may be extended to fourteen years rigorous imprisonment.

9. The motorcycle of the accused party was picked up by the police authorities and same is lying in the custody of the police while the CNIC of one of accused Faisal Javed was also picked up, photograph of which was identified by the complainant, who also identified the petitioner during the identification parade, held soon after the arrest of the accused. The offence is heinous and as per record, petitioner is involved in other cases of like nature.

10. Moreover, record shows that the accused persons got themselves medically treated from the PIMS on 23.09.2019 at 08:23 a.m. soon after the occurrence. The present petitioner presented him with forged name as Sohail Tanvir son of Akbar and the CDR confirms their presence at the location. The registration

number of the motorcycle, allegedly used during the occurrence, was also got verified from the concerned ETO office, report whereof confirms that the registration number was bogus and fictitious which, *prima facie*, shows their evil designs and habitual nature in committing heinous offence.

11. There is a promptly lodged FIR, recovery is also there and if the complainant could not show the courage to chase, they would be successful in escape after committing the heinous offence. There is no reason put forward that why the complainant implicated the petitioner falsely.

12. In a case of robbery reported as ***"Aqeeb Ali Mehmood Vs The State and another (2017 PCr.LJ Note 129)"***, the Hon'ble Lahore High Court, while discarding the plea of false implication, refused to allow the bail by observing as under:-

"The petitioner is named in a case of robbery committed in broad daylight in the midst of city; apparently the complainant has no axe to grind in order to falsely implicate him in a heinous crime. The co-accused has been granted bail through an order far from being happy, merely on the ground that he after his remission into custody did not lead to any recovery and as such the petitioner cannot press into service an erroneous favour extended to his comrade in crime. Bail is not to be necessarily granted to an accused merely on the basis of a concession that ought to have been withheld; it would tantamount to repeat an error."

13. The offence is non-bailable, falls within the ambit of *prohibitory* clause of section 497 of the Cr.PC and is an offence against the society.

The case law relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

14. It is an admitted position that after submission of challan, the trial is in progress and now the case is set for recording of evidence and in the light of case law reported as *Rehmatullah. Vs State (2011 SCMR 1332)*, the courts should not grant or cancel bail when the trial is in progress and proper course for the courts 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