

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

Criminal Misc. No. 723-B/ 2020

Zahoor Ahmad Khan
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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23.06.2020	Mr. Zahid Akhtar Satti, Advocate for petitioner, Mr. Bilal Ibrahim, learned State Counsel, Arshad Ali ASI, P.S. Karachi Company with record.
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This is post-arrest bail petition by accused-petitioner (Zahoor Ahmad Khan) in FIR No. 86, dated 26.02.2020, under Sections 380/411 PPC, Police Station Karachi Company, Islamabad.

2. Precisely, facts necessary for the disposal of instant bail application are that respondent No.2/complainant submitted an information to the police that her relative was admitted in the PIMS Hospital and she was present there to lookafter him. However, on 02.01.2020 at 12:45 a.m.(night) when she went to the wash-room of the Ward, someone stolen her two mobile phones which were switched on for charging. She instantly reported the incident to rescue 15. Now she came to know that police has arrested culprit and recovered some mobile phones from him. She has duly identified her

own mobile phones among the recovered mobile phones, hence, this FIR.

3. Learned counsel for the petitioner contends that there is delay of 54 days in lodging the FIR which has not been explained in any manner, while distance from the alleged occurrence and of the police Station is of three kilometres; that the allegation set-forth in the FIR is that two mobile phones which were reported to be stolen were recovered from the present petitioner in response to the FIR No.77 dated 22.02.2020 and in such case, petitioner has already been enlarged on bail by another Bench of this Court vide order dated 10.06.2020; that offence does not fall within prohibitory clause of Section 497 of Cr.P.C.. Learned counsel has placed reliance upon case laws reported as PLD 2017 Supreme Court 733; 2009 SCMR 1488 and 2012 SCMR 573 in support of his contention.

4. Notices were issued to the respondent No.2/complainant, wherein she submitted through I.O. that she is not interested to engage a private counsel and consented that her case be argued by the State Counsel.

5. On the other hand, learned State Counsel argued that total 18 mobile phones were recovered from the petitioner in another FIR No.77 dated 22.02.2020. However, certified that petitioner is not involved in any other case except mentioned above; that challan has been submitted in the Court on 29.02.2020, therefore, petitioner is not entitled to the concession of bail.

6. Arguments heard, record perused.

7. As per available record, petitioner has been booked in the instant FIR merely on the basis of possession of mobile-phones. Two mobile-phones have been identified by respondent No.2/complainant. Same were recovered from the present petitioner. It is yet to be determined by way of recording of evidence that whether said mobile-phones were stolen by the present petitioner or otherwise, particularly in the light of fact that there is a delay of around 54 days in lodging the FIR and occurrence. In this respect reliance is placed on 2017 YLR Note 5 (Peshawar)(Abdul Waheed Vs. The state and another}, wherein it is held that:-

“Recovery of case amount of Rs.41.030/- from his possession. It is yet to be seen at the trial that whether the amount allegedly recovered from possession of the petitioner is stolen amount or otherwise. From the available record, the petitioner can be charged with an offence under Section 411 PPC, the punishment of which does not fall within the prohibitory clause of section 497 Cr.P.C. Moreover, investigation in the case is complete and the petitioner is no more required by the local police for further investigation. All these factors, on tentative assessment, make the case of petitioner one of further inquiry entitle him for the grant of bail.”

8. Challan has been submitted in the Court on 29.03.2020 and petitioner is no more required for the purpose of investigation as no useful purpose would be served by putting him behind the bars.

9. Offence levelled in the FIR against the present petitioner does not fall within the prohibitory clause. In this respect reliance is placed on 2019 SCMR 1152 (Arsaln Msih and

other Vs. The state and other), wherein it is held that:-

“So far offence under Sections 380 and 411 PPC are concerned both these offences do not fall within the prohibition contained in section 497, Cr.P.C. and in such like cases bail is a rule and refusal is an exception. The exceptions mentioned in the case of Tariq Bashir and 5 others V The State (PLD1998 Sc 34) are not attracted to the case of petitioner No.2 as he is previously non-convict and his involvement in another case of similar nature without any conviction could not be a reason for refusal of bail especially when such case was registered after the registration of the present case.”

10. In another case reported as **2020 MLD 153 (Peshawar) (Karamat Ullah Vs. The State and another)**, it is held as:-

“Even otherwise, the offences with which the petitioner is charged do not fall within the prohibitory limb of Section 497, Cr.P.C. and in such like cases grant of bail is a rule while its refusal is an exception. In this respect reliance can be placed on the case law reported as Muhammad Tanveer V. The State PLD 2017 SC 733, Arsalan Masih and others Vs. The State, 2019 SCMR 1152 and

Abdul Waheed V. The State and another, 2017 YLR Note 5 (Peshawar (D.I. Khan Bench). In my view case of petitioner does not fall within the exceptions.”

11. Consequently, the instant bail petition is **allowed**, petitioner (Zahoor Ahmad Khan) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of **Rs.100,000/-** (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

12. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not effect/influence trial of the case in any manner.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

A.R.Ahmad