

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Miscellaneous No.107/2020

Zulifqar Ali and another
Vs.
The State and another.

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.02.2020	Mr. Ishtiaq Ahmed, Advocate along with petitioners in person. Mr. Aurangzeb Asad Khan, counsel for Complainant. Mr. Zohaib Hassan Gondal, State Counsel. M. Azam, Assistant Sub-Inspector.

Through the instant petition, the petitioners *namely, Zulfiqar Ali and Nisar Ahmed sons of Mansabdar* have sought bail before arrest in case F.I.R No.109, dated 25.03.2017 registered under sections 447/ 511/ 506/ 427 & 147 of Pakistan Penal Code, 1860 (hereinafter referred to as “PPC”) at Police Station Koral, Islamabad.

2. Briefly stated facts of the prosecution case are that on 25.03.2017, Muhammad Naeem Khan s/o Nayaz Muhammad lodged F.I.R No.109/2017 with Police Station Koral, Islamabad, with the averments that on 12.12.2012, he purchased a plot bearing No.30, Street No.7, Phase 5-B, situated at Ghauri Town, Islamabad. It is further

submitted that he raised a boundary wall over the said plot. On 28.02.2017, while the complainant was present at the said plot for fixation of a gate, the petitioners along with their accomplice, having arms came there and extended threats and tried to stop him from construction and forcibly took alongwith them the gate. Today again, the accused persons came to the plot, broken the walls constructed over the plot and claimed ownership over the same plot. Hence the instant FIR.

3. The learned counsel for the petitioners has contended that the petitioners are totally innocent, they have been involved in the instant case with malafide intention of the complainant; the instant case has been registered against ~~the~~³ them in connivance with the local police; story as narrated in the F.I.R is false, frivolous and concocted; there is no direct or indirect evidence against them for the commission of the alleged offences; no specific role has been attributed to the them; there is an inordinate and unexplained delay in lodging the FIR, which is the result of consultation and roping the petitioners falsely; the petitioners have already filed a civil suit against the complainant for declaration; the co-accused

have already enlarged on bail; keeping in view the rule of consistency, the petitioners are also entitled to the same relief; the offences are not attracted against the petitioners and do not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; offences under section 506(ii) and 148 PPC were deleted. The learned counsel has urged for the confirmation of the pre-arrest bail already granted to the petitioners.

4. Conversely, the learned State counsel assisted by the learned counsel for the complainant has vehemently opposed the contentions raised by the learned counsel for the petitioners and have contended that the petitioners are nominated in the F.I.R; the petitioners are playing hide and seek with the Courts; all the offences are cognizable in nature; the pre-arrest bail of the petitioners was dismissed by the learned Additional Sessions Judge, Islamabad; the conduct of the petitioners brings their case within the exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 Cr.P.C. It has been alleged that in the circumstances, the petitioners are not entitled to bail. Hence, prayed for dismissal of the instant petition.

5. Perusal of record reveals that though the petitioners are nominated in the F.I.R but no specific role has been attributed to them. The alleged offences are stated to have been committed on 28.02.2017, whereas the instant F.I.R was registered on 25.03.2017 i.e. after a delay of twenty-six days without any plausible explanation, which creates doubts in the prosecution story. The dispute between the parties is regarding possession and ownership of a plot. Admittedly, civil litigation is pending between the parties. It is obvious from a plain reading of the FIR that several persons have been nominated. The co-accused of the petitioners has been granted bail. The Investigating Officer could not show sufficient incriminating material against the petitioners. The delay in registration of the FIR, *prima facie*, appears to have effected while collecting the evidence from the crime scene by the Investigating Officer. The offences do not fall within the prohibitory clause of section 497 of Cr.P.C. All these factors make it a case of further probe. The parties are entangled in civil litigation and, therefore, it cannot be ruled out at this stage that the criminal case may have been registered to humiliate the petitioners. Confirmation of pre-arrest bail is indeed

distinguishable from granting a post arrest bail. Therefore, a case is made out for confirmation of bail in the light of the principles laid down by the Hon'ble Supreme Court in the case titled "Muhammad Rafique and another" [PLD 2009 S.C. 427]. This Court is, therefore, inclined to confirm pre-arrest bail already granted to the petitioners.

6. For what has been discussed above, the instant petition is ***allowed*** and the pre-arrest bail already granted to the petitioners vide order dated 12.02.2020, is hereby ***confirmed***, on the same bail bonds already furnished by the petitioners.
7. Needless to mention that this is a tentative assessment, which shall not effect the trial of the case in any manner.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

*Rana.M.If**