

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

Criminal Misc. No. 726-B/ 2020
Azam Ali
Vs
The State etc

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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24.06.2020	Mr. Ahmad Sher Gondal, Advocate for petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Ali Kamran ASI with record.
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This is post-arrest bail petition by accused-petitioner (Azam Ali) in FIR No. 437, dated 26.12.2019, under Sections 381, 411/34 PPC, Police Station Shalimar, Islamabad.

2. According to FIR, on 25.12.2019, when the complainant along with his family went to Faisal Masjid in connection with Nikah ceremony of close relative, his maid Naheed Bibi and her husband Azam Ali (present petitioner) stolen an amount of Rs.510,000/- and 53 tolas gold ornaments from his house. Hence, this FIR.

3. Learned counsel for the petitioner contends that recovery as alleged contains no particular that whether the same was recovered from the present petitioner or otherwise; that co-accused Ardish Ali has been declared innocent by the local police while co-accused Naheed Bibi has already been extended bail; that the offences alleged do 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.

Further contends that the recovery as alleged has been made on the day when the petitioner was arrested i.e. 05.03.2020.

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

5. On the other hand, learned State Counsel argued that major portion of stolen articles has been recovered on the pointation of petitioner; that petitioner is previous non-convict and non record holder.

6. Arguments heard, record perused.

7. As per available record, petitioner has been booked in the instant FIR on the allegation set-forth by the respondent No.2/complainant whereas amongst the others certain articles were allegedly stolen by the present petitioner being house servant. It is yet to be determined as to whether ornaments were stolen by the petitioner or the same were only recovered from his possession. 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. In case reported as **2009 YLR 2055 (Muhammad Iqbal Vs The State)**, Hon’ble Lahore High Court, Lahore in same nature of offence held that no source of theft was mentioned in the FIR and while making tentative assessment of the material available on record, Court came to the conclusion that case against the petitioner is of further inquiry and bail was granted. In another case reported as **1994 PCr.LJ 734 (Hafiz Zameer Hussain Vs The State)**, it is held that:-

“Articles recovered from the applicant were not got identified in a regular test identification parade of articles before a Magistrate. This being the position, at the most the applicant can be said to be found in possession of some property which is alleged to be stolen for which the applicant will be liable at the most under section 411, P.P.C.”

9. Offences levelled in the FIR against the present petitioner do not fall within the prohibitory clause. In this respect reliance is placed on **2019 SCMR 1152 (Arsalan Masih 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. Challan has been submitted in the Court and petitioner is no more required for the

purpose of investigation as no useful purpose would be served by putting him behind the bars.

11. 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 Vs. 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."

12. Consequently, the instant bail petition is accepted, petitioner (Azam Ali) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.500,000/- (Rupees ^{Five PTH} One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

13. 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

Imran