

JUDGMENT SHEET  
ISLAMABAD HIGH COURT  
ISLAMABAD

**Crl. Misc. No.914-B/2020**

**RAEES KHAN.**  
Versus  
**THE STATE AND ANOTHER.**

*Petitioner by:* Mr. Imran Shuakat Rao, Advocate.

*State by:* Mr. Hasnain Haider Thaheem, State Counsel.  
Mr. Sajid Iqbal, A.S.I.

*Date of Hearing:* 19.08.2020.

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**LUBNA SALEEM PERVEZ; J:** Through instant bail petition, the petitioner seeks post arrest bail in case FIR No.179/2020, dated 11.05.2020, for offences under section 380/457 PPC, registered at Police Station Sihala, Islamabad. Prior to filing this petition, the petitioner applied for bail after arrest before Judicial Magistrate (East), Islamabad which was dismissed, vide order dated 29.07.2020, whereafter post arrest bail was applied before Additional Sessions Judge (East), Islamabad who also declined the same, vide order dated 05.08.2020. Hence, present bail petition.

2. Facts as per FIR are that the complainant who resides at the upper portion of the house No. 63, Street No. 16, Sector G, DHA, Phase-II, Islamabad, on his return from an Iftar party on 09.05.2020 at 10:00 pm and found all the belongings littered on the ground, whereas, 20 tola gold, prize bonds worth Rs. 96,000/-, Rs. 4,000/- cash and 1,500,000/- Iraqi Dinar were found stolen. According to his statement, locks of the house were intact but the grill of the TV lounge and the room were cut down to enter the house for the purpose of committing the offence of theft.

3. Learned counsel for the petitioner submitted that there is an unexplained delay of two days in registration of FIR; that the petitioner has been arrested on 24.07.2020, and he is behind the bars since then; that the accused/petitioner is arrested on the false and frivolous accusation due to enmity of the petitioner with his relatives who in connivance with the police has involved him in the present case; that the petitioner has been arrested on the basis of alleged admission of the offence during investigation of another FIR No. 191/2020, dated 21.05.2020, registered in P.S. Sihala, for offence u/s 380/457 PPC; that the petitioner has been granted bail by the Judicial

Magistrate Sec-30, East, Islamabad, in the FIR No. 191/2010, vide order dated 22.07.2020; that the FIR has been registered against unknown persons who have illegally and unlawfully entered the house of the complainant and the petitioner has not been nominated in the FIR; that there is no independent witness of the commission of offence; that the allegation of tracing the presence of the petitioner on the location of the complainant's house through CDR is also incorrect as it does not tally with the location of the petitioner at the time of commission of offence; that had the petitioner was involved in the offence he would have been caught in the CCTVs installed in the DHA as no such footage is available with prosecution; that the case is of further inquiry; that the case falls under non prohibitory clause of section 497 Cr.PC; that the petitioner is not previously convicted and the investigation has been completed by the prosecution and is not required for further investigation, as such, no useful purpose would be served if he remains incarcerated. He, in view of the above submissions, prayed for concession of bail by relying on judgment re: *Arsalan Masih and others v. The State and others (2019 SCMR 1152)*.

4. Complainant opted not to appear to pursue the present case despite proper service of the Court summons/notices on him.

5. Learned State Counsel controverted the arguments made on behalf of the petitioner and submitted that the delay in FIR is not fatal; that the petitioner is linked through CDR; that the petitioner has been involved in other offences of similar nature and during the investigation in another case of FIR No. 191/2020, has admitted the commission of theft in the house of the complainant; that huge amount of 350,000/- Iraqi Dinar was recovered from the accused; that the petitioner is hardened, habitual and desperate criminal and is not entitled for lenient view of concession of bail; that the petitioner is Afghan national and temporary residing at Bhara Kahu and there is strong apprehension that the petitioner may abscond, if released on bail, hence, is not entitled to the concession of bail.

6. Arguments heard. Record perused.

7. The police record has been perused where from it has transpired that the petitioner has been involved in number of other cases of house breaking and theft and some other FIRs u/s 380/457 PPC has also been registered. The petitioner/accused is admittedly an Afghan National and could not produce his identification like Afghan card issued by NADRA authority, etc. as such, there is every possibility of his abscondence, if released on bail. It has also been observed from the record that 350,000/-Iraqi Dinar have been recovered from him as per recovery memo dated 25.07.2020, which *prima facie* connects him

with the commission of offence reported through present FIR. The offence allegedly committed by the petitioner/accused is against the society and since, he appears to be habitual offender, therefore, there is every likely hood of repeating of offence, if released on bail. The Hon'ble Supreme Court of Pakistan vide their judgment re: *Tariq Bashir vs. The State (PLD 1995 SC 34)* has laid down the exceptions for refusal of bail which are as under:

- (a) *where there is likelihood of abscondance of the accused;*
- (b) *where there is apprehension of the accused tampering with the prosecution evidence;*
- (c) *where there is danger of the offence being repeated if the accused is released on bail; and*
- (d) *where the accused is a previous convict.*

Thus, the concession of bail can be refused in exceptional cases and the case of the petitioner falls within the exceptions mentioned in the above cited judgment of Hon'ble Supreme Court of Pakistan as petitioner is an Afghan National having no identification or verification by Pakistani authorities thus apprehension of abscondence after grant of bail cannot be brushed aside. The petitioner though not convicted, however, as per police record has a history of involvement in offences of similar nature thus repetition of offence also cannot be ruled out.

8. In view of the above, instant bail petition is **dismissed**. However, the trial Court is directed to conclude the trial of the accused/petitioner within six weeks, positively, from the date of receipt of this judgment. In case the trial is not concluded within the stipulated time the petitioner is at liberty to apply for bail after arrest afresh before the learned Magistrate.

9. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*Junaid*