

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 773-B of 2020.

Muhammad Ashraf.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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02.07.2020. Mr Basharat Ullah Khan, Advocate for the petitioner.
Mr Muhammad Saleem Karimi, Advocate for the
complainant.
Mr Mumtaz, SI with police record.

The petitioner Muhammad Ashraf son of Muhammad Shafi
has sought post arrest bail in case F.I.R. No. 84, dated 14.02.2020,
registered under sections 394/337-F(i)/411/109 of Pakistan Penal Code,
1860 (hereinafter referred to as "**PPC**") at Police Station Golra Sharif,
Islamabad.

2. Brief facts as alleged in the FIR are that on 14.02.2020 three
unknown persons entered the house of the complainant pretending to be
government officials. It was further alleged that they committed theft and
while leaving fired at Mazhar Ali, as a consequence whereof the latter
sustained injuries. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that;
the latter has been falsely involved in the instant case; the petitioner was
not present at the place of occurrence; the petitioner was involved in the
instant case after recording of supplementary statement of the

complainant; the petitioner was not arrested from the crime scene; no incriminating material was recovered from his possession; recovery if any is fake and planted; the petitioner has been incarcerated for more than four months; story as narrated in the FIR is false, frivolous, vexatious and baseless; the petitioner is not nominated in the FIR; no specific role has been attributed to the petitioner; there is no direct or indirect evidence against the petitioner; the petitioner has no concern whatsoever with the alleged offences; investigations qua the petitioner have been completed and he is no more required for the purpose thereof; offences are not attracted against the petitioner; allegation against the petitioner is that of further inquiry; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the co-accused of the petitioners namely, Haleema Bibi and Uzma Bibi have been enlarged on bail and the case of the petitioner is at par with them, keeping in view the rule of consistency; mere recovery does not constitute an offence under section 394 PPC; hence urges for the grant of post arrest bail.

4. The learned counsel for the complainant appeared alongwith Mumtaz SI and they have opposed the grant of bail. It was argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the petitioner; the petitioner is a hardened and desperate criminal, if he is released on bail, he will repeat the offence; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and the trial is to commence shortly; case against the petitioner falls within the ambit of prohibitory clause of section 497 of Cr.P.C.; hence prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. It is an admitted position that the petitioner has not been nominated in the FIR and no specific role has been attributed to him. The Investigating Officer stated that one of the accused had made a statement before the Incharge Police Station and had disclosed the role of the petitioner as the mastermind. The Investigating Officer conceded that statement of the said accused was not recorded under section 164 of Criminal Procedure Code, 1898. Moreover, the Investigating Officer further stated that the accused who had allegedly disclosed the role of the petitioner has become a fugitive from law. The role of the petitioner in the instant case definitely requires further probe. The report under section 173 Cr.P.C. has been submitted before the learned trial Court. A plain reading of the FIR in the instant case shows that further probe is required whether ingredients of the offences mentioned in the case are fulfilled to the extent of the petitioner. Investigations qua the petitioner have been completed and he is no more required for the purposes thereof. The petitioner has been incarcerated for more than four months. In the facts and circumstances of the instant case, the continued incarceration of the petitioner is not likely to serve any useful purpose at this stage.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken

relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run”.

8. In the circumstances as mentioned above, this petition is ***allowed*** and the petitioner is ***admitted*** to bail, subject to furnishing bail bonds in the sum of Rs. 100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**