

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Cnl Misc 61-B-2013.

Cnl Misc 62-B-2013.

Titled Asif Iqbal Vs State etc.

- (a) Judgment approved for reporting ☒ Yes / ☐ No
- (b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made. Yes / ☒ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(1) CRL. MISC. NO.61-B/2013.

ASIF IQBAL

VERSUS

THE STATE AND ANOTHER

2) CRL. MISC. NO.62-B/2013.

SHAHZAD

VERSUS

THE STATE AND ANOTHER

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

12.03.2013

Mr. Abdul Hafeez Tanoli, Advocate for the petitioner.

Malik Shaukat Mahmood, Advocate for complainant.


Mr. Zahoor Akhtar Awan, learned Standing Counsel.

Record produced by Zafar Iqbal, ASI, Police Station Sabzi Mandi, Islamabad.

By this single order, both the above mentioned bail petition are disposed of as arise of same FIR.


2. Both the petitioners seeks post arrest bail in case FIR bearing No.373, dated 28.7.2011 under section 395/412 PPC, registered at P.S Sabzi Mandi, Islamabad.

3. Initially, FIR was lodged u/s 406 PPC but

 subsequently on the basis of supplementary statement of complainant on 08.8.2011 sections 395 & 412 were

added during course of investigation. The incident alleged to have occurred on 27.7.2011 whereas FIR was lodged on 28.7.2011 when the complainant acquired knowledge through his son Muhammad Arshad to whom, information conveyed by driver namely Syed Nasir Hussain Shah.

4. As per facts in brief, the complainant used to supply oil through his two oil-tankers at various places. Oil-Tanker bearing No. D.I. Khan C-3417, Nissan Model 1993, used to drive by Syed Nasir Hussain Shah, resident of Dhok Damman, Taxila since 18 days. He loaded 30000 liters oil from Chaklala Depot to Jalalabad. On crossing Toll Plaza IJP Road, one white colour Corolla, intercepted the Tanker, whereupon five persons alighted from the said car. Out of them, two were arms with pistols, came from driver side and two from Conductor side, while remaining guarded near the car. They started beating Conductor and driver and threatened to kill, if they make noise. One of them by driving the Tanker to some extent, Driver and Conductor were boarded in the car, while remaining two persons drove away the oil tanker. The complainant shown his suspicious over driver and the value of the Diesel disclosed to be 29 lacs and value of Tanker to be 30 lacs. They left the Conductor at Taxila Bypass, where he, on 27.7.2011 at about 4:40 a.m.

 informed son of the complainant and therefore, on receiving such information, FIR was lodged.

2. Learned counsel for the petitioners argued that petitioners are not nominated in the FIR, rather they have been falsely implicated merely on the disclosure of the co-accused and false recovery has been planted upon the petitioner. Tanker was recovered on 29.7.2011 by the Police under Section 550 Cr.P.C. as unclaimed property. Conductor of the Tanker was not cited as PW, however, the final report under Section 173 Cr.P.C. was submitted citing therein only three PWs, whereas while submitting supplementary challan, one Nasir has also been sent up as accused. It is further argued that the petitioner resides within the jurisdiction of Police Station Dhamial Camp, Rawalpindi, but while effecting recovery, the police not informed Police Station Dhamial nor kept any entry of their arrival within the jurisdiction of such Police Station. It is also argued that owner of Patrol-Pump of Attock, where allegedly stolen diesel was sold, has not been examined nor shown as PW. On 05.09.2011, identification parade was held and prior to that accused were present before the Court, when they were shown to the complainant, which fact, the accused/petitioners disclosed before the concerned Magistrate, while holding identification parade. Initially, co-accused Asif disclosed the name of the petitioner Shahzad, with whom, he has dispute over landed property, hence false implication cannot be ruled out. The sole eye witness of the case i.e. Cleaner

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of the tanker firstly identified the petitioners during course of identification parade but before the trial court while recording his statement as PW-1, he has not uttered even a single word regarding identification of the petitioners, therefore, the same has no evidentiary value and creates serious doubts about the prosecution story.

5. Learned counsel for the petitioners while referring depositions of cleaner examined before the Trial Court on 30.5.2012 only eye witness of the incident argued that he has not implicated present accused being one of collusive alimant to others committed the offence which subsequently form out offence u/s 399 PPC. Therefore, he focused his arguments that there is no evidence available on record with regard to the commission of offence falling u/s 395 PPC. The case of the petitioners falls within the ambit of further inquiry and they are behind the bars since their arrest, as such, they are entitled to post arrest bail on statutory ground. The delay in conclusion of trial cannot be attributed to the petitioner, rather on the part of the prosecution, as such, they are also entitled to the concession of bail on this ground also.

6. Learned counsel for the petitioner further argued that co-accused of the present assigned namely Matlob Hussain and Amir Saeed having similar roles, have been granted bail by this Court vide orders dated

22.10.2012 and 18.12.2012, therefore, their case are also at par with them, as such, they are also entitled for grant of bail on the rule of consistency.

7. Learned counsel for the complainant vehemently opposed the grant of bail to both the petitioners and contended that handsome amount was recovered on the pointation of the petitioners and the huge amount cannot be foisted upon the accused. Moreover, recovery effected upon the very date of arrest i.e. 04.9.2011. Two vehicles used in the commission of offence, out of which, Mehran Car recovered by the police, when rental car was also detected by the Police, to which, the owner of rental car disclosed the names of accused i.e. Asif, Amir and Sajid. He argued that on 18.9.2011 place of incident was inspected and the accused was sent up under Section 173 Cr.P.C., on 30.9.2011. All the PWs through their statement including the complainant have involved the present accused and recovery effected from all the accused persons. Therefore, prima-facie, the material available on record to connect the accused/petitioner with the commission of offence. He also argued that the accused/petitioners has not shown any enmity with the complainant or the PWs, who picked up them in the identification parade held inside the Jail, where there is no possibility of seeing the accused by any of the PWs or the complainant.




8. Learned Standing Counsel argued that accused being members of the gang of dacoit, were arrested and after their arrest, the important piece of the evidence in the shape of recovery, identification parade and other incriminating evidence, connected the petitioners/accused, are available on record, which positively suggest their involvement in the commission of offence.

9. Arguments at length have been heard from both the sides and record perused as well.

10. So far the concern of allegation leveled against the petitioners specifying offence u/s 412 PPC, learned counsel for the petitioners has drawn my attention towards ground 'K(I)' whereby it is urged that there is no evidence collected by the police as to who sold that stolen diesel, to whom it was sold and against total consideration that too is lacking coupled with the fact that the police has not collected any evidence with regard to the currency notices which actually recovered by the police as an amount of sale proceed of stolen oil.

11. With such argument, learned counsel for the petitioners has emphasized that in the absence of such evidence, the allegation of 412 PPC can not be established against the present accused couple with the fact that the star witness i.e cleaner of the tanker

 has not implicated him during his examination before the court. He argued that so far the concern of

evidence recorded by the Trial Court consisting of rest of other eye witnesses whose evidence is hear say in nature and in view of Article 71 of Qanun-e-Shahdat Order 1984, same appears to be inadmissible to prove the allegation for offences under section 395 or 412 PPC.

12. So far the concern of evidentiary value as learned counsel placed before me after going through the same, I am of the considered opinion that there is no iota of evidence is available which falls u/s 395 PPC. So far the concern of application of section 412 PPC which too in my view is lacking while going through the record and evidence recorded by the Court. The accused was initially arrested on the disclosure of one Abdul Rahim who was arrested by the police subsequently discharged after compromise with the complainant for which the prosecution has no explanation.

13. The punishing section 395 PPC provides punishment for dacoity which is for life or with rigorous imprisonment for a term may extend to ten years and shall also be liable to fine. Section 391 PPC defines the dacoity when five or more persons conjointly commit or attempt to commit robbery, same will constitute an offence of dacoity.

14. Chapter XVII defines for offences against property which includes different types of theft from section 378 PPC to 382 PPC. Also extortion from 382

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PPC to 389 PPC. Robbery defined at section 392 PPC to 394 PPC whereas dacoity defined under section 391 PPC punishment whereof provided under section 395 PPC. The dacoity has a significant feature of committing an offence by five or more persons conjointly for which an enhanced punishment is provided by section 395 PPC. But the very important feature in this case is observed that there is no required evidence is available to connect the present petitioner with the charge of dacoity.

15. Like-wise sections 411 and 412 PPC separately introduce defining separate punishment for specifically receiving stolen property in the commission of dacoity whereas the possession of stolen property in all other case specified as theft of different kinds.

16. The prosecution as required ingredients for proving any offence falling under section 412 PPC has not collected any evidence. The amount as a sale proceed of the stolen diesel/oil is alleged which could be determined at the trial but from the available record, such allegation shrouded in mystery.

17. The rented car allegedly used in commission of offence, has not been shown in the FIR. This appears to be subsequent improvement.

18. Otherwise, such type of admission as envisaged by section 38 and 39 of Qanun-e-shahdaat Order 1984 is not admissible, therefore, the arguments has not to be discussed elaborately or required to be discussed



on such evidentiary value but it dis-links the source of information received by the police, thereby present accused was apprehended by police.

19. Co-accused of the present petitioners namely Matloob Hussain and Amir Saeed, having similar roles, have been granted bails by this Court vide order dated 22.10.2012 and 18.11.2012, therefore, the case of the present petitioners are at par with them, therefore, they are also entitled post arrest bail on the principle of rule of consistency. Therefore, they are ordered to be released on bail subject to furnishing surety bonds in the sum of Rs.500,000/- (each petitioner) with PR bonds in the like amount to the satisfaction of Trial Court.

20. In view of above discussion, both the criminal miscellaneous are allowed. The observations made above, are tentative in nature shall not affect the case of either parties during trial.

[Signature]
*AR.ANSARI/

Approved for reporting

Blue slip added.

(NOOR-UL-HAQ N. QURESHI)
JUDGE