

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 270/B/2019.

Raja Daniyal Sangar

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.05.2019.	Mr. Muhammad Ilyas Siddiqui, Advocate alongwith petitioner. Barrister Rizwan Ahmed, Special Prosecutor NAB. Asad Masood Janjua, Dy. Director NAB. Sohail Akram Warriach, ASI. Naseer Ahmed, HC NAB, Rawalpindi/complainant.

Through this Crl. Misc., the petitioner Raja Daniyal Sangar has applied for pre-arrest bail in case FIR No.134, dated 19.04.2019, U/S 506-ii/186/34 PPC, P.S. Kohsar, Islamabad.

2. Brief facts referred in the instant case are that complainant/respondent No.2 Naseer Ahmed, HC of NAB got lodged the FIR with the allegations that he alongwith other NAB officials Rawalpindi went to arrest accused Shahid Rafi resident of House No.13, Street No.66, F-7/3, Islamabad in compliance of warrant of arrest issued by NAB when double cabin GC-099 white colour comprising of 6/7 armed persons and a car white colour also came on spot who tried to enter into the house and when they were confronted they loaded their weapons and threatened the officials. One of the persons was identified as Raja Daniyal who is the close

relative of accused Shahid Rafi.

3. Learned counsel for the petitioner contends that petitioner has been nominated in the above mentioned criminal case and as such there is no evidence that petitioner ever objected or intervened into official duty of NAB officials; that there is no evidence of use of weapons and threat and at the most simpliciter threat is attributed to the petitioner which is bail-able offence; that it is not the case of NAB that petitioner has tried to rescue the arrested person Shahid Rafi who was already taken into custody by the NAB officials.

4. Conversely, learned special prosecutor NAB contends that petitioner has been nominated with specific role and in order to recover the weapon it is necessary to arrest the petitioner, even there is no malafide on the part of NAB officials to involve the petitioner in this case.

5. Arguments heard, record perused.

6. From the perusal of record, it has been observed that instant criminal case FIR No.134, dated 19.04.2019, U/S 506-ii/186/34 PPC, P.S. Kohsar, Islamabad was got lodged by the complainant, whereby he alleged that he alongwith senior officials of NAB raided at the house of accused Shahid Rafi i.e. House No.13, Street No.66, F-7/3, Islamabad in compliance of warrant of arrest when petitioner alongwith others 6/7 armed guards came on two vehicles and tried to enter into the house of Shahid Rafi, who were restrained from doing so,

whereupon petitioner alongwith others loaded the weapons and extended threats.

7. I.O in attendance has been confronted as to whether he has collected any warrant of arrest of NAB authorities which was claimed by the NAB officials to arrest Shahid Rafi, whereupon the I.O of this case contends that no such documentary evidence is available, even such fact was not recorded in the police diaries. NAB officials present in the Court were also asked to produce any warrant of arrest of Shahid Rafi, who was allegedly arrested on 19.04.2019 when the alleged incident took place, the NAB officials present before the Court have failed to submit any document although Special Prosecutor NAB contends that Shahid Rafi was already arrested when petitioner came on spot and extended threats and at present Shahid Rafi entered into plea bargain with NAB.

8. I have also gone through the record and confronted the I.O of this case as to whether he has seen safe city CCTV footage to ascertain the fact of 6/7 armed personnel coming at House No.13, Street No.66, F-7/3, Islamabad on the fateful day, whereby he candidly conceded that no vehicle has been identified, even complainant in his own FIR has not referred the number of car in which petitioner came on spot. The record further reveals that double cabin vehicle GC-099 has not been verified by the ETO, Islamabad as no such vehicle was registered on the said registration number. The

petitioner has taken the stance that he was not present on the spot and has taken the plea of *alibi* but at this stage such plea could not be verified.

9. While considering the entire background, the mysterious conduct of the NAB officials is apparent in which no warrant of arrest has been placed on record, nor even placed any document before this Court in which minimum requirement to justify that they have raided the house of accused Shahid Rafi on the said day in which petitioner has extended threats. This gives rise to a situation of malafide on the part of NAB officials, who have already arrested Shahid Rafi and as such there is no action left to intervene when Shahid Rafi has already been taken into custody. This factual aspect further created a ground of further inquiry in terms of Section 497(2) Cr.P.C. and from the contents of FIR, *prima-facie*, offence U/S 506(ii) PPC is not made out. The petitioner is resident of Islamabad and there is no apprehension that he might abscond.

10. I am of the view that allegations against the petitioner, if accepted in *toto*, no offence punishable U/S 506(ii) PPC is *prima-facie* made out as the threat simpliciter does not constitute the offence of criminal intimidation within the definition of Section 503 PPC as held in 1988 P.Cr.L.J 270 (Syed Ali Asghar Shah Vs. The State). The elements of malafide and further inquiry are visible on record and petitioner is entitled for the extraordinary relief of pre-arrest bail as if he is taken into

custody he would be exposed to unjust harassment at the hands of police, therefore, instant petition is **allowed** and ad-interim pre-arrest bail granted to petitioner vide order dated 30.04.2019 is hereby confirmed subject to furnishing of bail bonds in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in the like amount to the satisfaction of the learned Trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid