

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.1011-B/2020

Naqeeb Ullah.

Versus

THE STATE, etc.

Petitioner by: Mr. Muhammad Shahzad Siddique, Advocate.

Complainant by: In person.

State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Niaz, A.S.I.

Date of Hearing: 09.10.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, the petitioner seeks post arrest bail in case FIR No.398, dated 20.08.2019, for offences under section 392/511 PPC, registered at Police Station Golra Sharif, Islamabad.

2. The Petitioner/accused applied for bail after arrest before Additional Sessions Judge (West), Islamabad, however, same was declined, vide order dated 03.03.2020.

3. As per contents of the FIR, the facts of the case are that at 07:30 in the morning of 19.08.2019 some unknown persons forcibly entered the house of the complainant with the intention of decoity and held the wife on the gun point, on which she started screaming. After hearing her voice, the complainant came out of the house and tried to get hold on one of the decoits, but was unsuccessful, however, while escaping one of the dacoits dropped his wallet wherein the CNIC of the petitioner was found on the basis of which the petitioner was arrested for the offences under section 392/511 PPC on the charges of attempted dacoity in the complainant's house.

4. Learned counsel for the petitioner submitted that the FIR has been registered after a delay of more than 33 hours as alleged attempted dacoity

took place in the early morning at 7:30 a.m. but the incident has been reported at 4:30 in the evening of 20.08.2019 and no explanation whatsoever has been given for delay in registration of FIR; that no identification parade as per prescribed procedure was conducted to identify the petitioner by the complainant; that it has been alleged that the petitioner dropped his wallet during scuffle before escaping, however, no memo of recovery of wallet was prepared except the CNIC; that it has been alleged that the petitioner and his accomplice were armed with pistols, however, no pistol was recovered from the petitioner; that the statement u/s 161 Cr.P.C is also undated; that another FIR bearing No. 436/2019 dated 03.09.2019 was registered against the Petitioner on same story of dropping CNIC during scuffle in which this Hon'ble Court, vide order dated 32.08.2020 passed in Cr. Misc. No. 855-B/2020 has been pleased to grant bail to the Petitioner; that the petitioner was also involved in other similar FIR No. 357 dated 17.08.2019 u/s 394/411/420/468/471 PPC and FIR No. 394/2019 dated 30.08.2019 registered with PS Tarnol, wherein, the Petitioner was allowed bail by the Court of Judicial Magistrate Section 30-West, Islamabad vide judgments dated 07.09.2020 & 05.10.2020, respectively; that in another case bearing FIR No. 357 dated 04.08.2019 registered at PS Golra Sharif u/s 392/411 PPC, Petitioner was acquitted u/s 249-A Cr.P.C vide order dated 05.01.2010 by the Court of Judicial Magistrate Section-30, Islamabad-West; that the Petitioner has been falsely involved in the cases; that offences u/s 392 & 511 fall under non prohibitory clause; investigation from the petitioner has been completed and, therefore, he is no more required by the prosecution; that previous history against the petitioner have been fictitiously created as it is transparent from the bare reading of the FIRs that are lodged in the month of August and September, 2019 for similar nature of offences having identical set of facts and, therefore, the previous criminal history against the Petitioner cannot relied upon. He prayed for allowing the petition and grant of bail to the Petitioner.

5. Learned State counsel submitted that the petitioner has a previous history of similar offences and was nominated in number of FIRs; that there is no personal grudge of any one of the police officials or from the complainant side against the petitioner; that no one handed over his original CINC to

anyone and, therefore, he himself during attempted dacoity has dropped it at the place of offence; the petitioner is a habitual offender and there is likelihood of repeating the offence by him; that offences of robbery/dacoity are crimes against the society and the petitioner may misuse the concession of bail. She prayed for dismissal of present petition

6. Heard arguments of learned Counsel for the parties as well as learned State Counsel and have also perused the police record.

7. The record as well as the copy of judgment of this Hon'ble Court dated 31.08.2020, passed in bail petition number 855-B/2020, judgment of learned Judicial Magistrate dated 07-09-2020 & 05.10.2020 granting concession of bail and acquittal order u/s 249-A Cr.P.C dated 05.10.2020 in favour of the petitioner have been carefully perused as pointed out by the learned counsel for the petitioner that all the FIRs have been registered against him between 17.08.2019 to 03.09.2019 for the offences of similar nature. The judgment of this Court dated 31.08.2020 in petitioner's own case i.e. Crl. Misc. No. 855-B/2020 has been perused and interestingly the facts recorded in the FIR found to be nearly identical. For reference the facts recorded in judgment dated 31.08.2020 are reproduced below:-

Brief facts of the case are that on the written report of the complainant {Waheed Gul}, above referred F.I.R was lodged against unknown accused persons stating therein that suddenly for persons armed with pistol entered into his house. The complainant tried to catch one of them and during scuffle the identity card showing names as Naqeeb Ullah was fallen and found from the spot. They started searching their house and on gun point, they snatched away Rs. 4,50,000/-, 30 US dollars, Five dirhams, two ladies rings etc and made their escape good in a white coloured car.

This similarity of story of entering of unknown persons in the house of complainants with pistol, trying to catch the culprits and dropping of wallet/CNIC of petitioner Naqeeb Ullah as narrated in both the FIRs makes the case against the petitioner one of further inquiry. Reliance in this regard is placed on the case law reported as **Khiyal Saba and another Vs. The State and another (2020 SCMR 340)** and **Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310)**. It has been admitted that no identification parade duly prescribed in law has been conducted. Although, it has been stated in the FIR that persons in the vicinity gathered at the place of incident when they heard the screaming and shouting, however, no single

independent witness of the occurrence has been associated by the prosecution. The facts and circumstances of the case raise doubts in prosecution story and it is settled law that even for purposes of bail, law is not to be stretched in favour of the prosecution and if any single benefit of doubt arises, it must go to the accused. The cases relied upon are **"Amir vs. The State" (PLD 1972 SC 277)**, **"Shabbiran Bibi vs. The State" (2018 P Cr. L J 788)** and **"Syed Hassan Ali Shah vs. The State" (2019 P Cr. L J Note 159)**. Then it has been held in case reported as **"Zaigham Ashraf vs. The State" (2016 SCMR 2018)** that *"for getting the relief of bail accused only had to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case then he was entitled to avail the benefits of it"*. Moreover, the petitioner has been granted bail in all the cases registered against him either from this Court or from the Court of judicial Magistrate, whereas, in one case he was already acquitted u/s 249-A Cr.P.C. The investigation in the present case, as admitted by the prosecution, has been completed and as such he is no more required by them. Further the offences fall under non prohibitory clause and the Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard has time and again held, that when an offence does not fall within the prohibitory clause of Section 497 Cr.P.C, bail is a rule and refusal an exception. In this regard, guidance has been sought from the case law reported as **Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR, Page 1708)**, **Sikandar Zaman Vs. The State etc. (2011 SCMR, page 870)** and **Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR, page 1488)**.

8. For what has been discussed above, this bail petition is accepted and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees Two Lac) with one surety in the like amount to the satisfaction of learned Trial Court

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