

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.860-B/2020

SH. MUHAMMAD AUN.
Versus
THE STATE AND ANOTHER.

Petitioner by: Ch. Naveed Shahzad, Advocate.

Complainant by: Raja Rizwan Abbasi, Advocate for Complainant.

State by: M/s Muhammad Bilal Ibrahim and Mudassar Latif,
State Counsel.
M/s Abdul Qadir, SI and Ishfaq Warraich, ASI with
record.

Date of Hearing: 30.07.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, the petitioner Sh. Muhammad Aun seeks post arrest bail in case FIR No.248/2020, dated 22.06.2020, for offences under section 365/392/452/506(II)/34 PPC, registered at Police Station Ramna, Islamabad.

2. As per contents of FIR, facts in brief are that the Complainant has some business relationship with Iqbal alias Bala Gujjar, etc who had been extending threats to the petitioner of abducting him. It is mentioned in the FIR that previously the accused abducted the complainant and demanded Rs. 50,000,000/- (rupees fifty million) as ransom but he managed to escape. However, on 22.06.2020 accused persons kidnapped the driver of the complainant and his two friends namely Anwar Zeb and Tariq Amin by intercepting them in two vehicles (Prado black colored and Toyota GLI white colored) at G-10 roundabout who were taken to PHA Flat. His driver was beaten by the accused persons who then brought the driver to complainant house and kept on asking about complainant from his family members. Accused gave beating to complainant's children and extended threats to her wife. Accused left the complainant's house but again after a while returned along with his driver and above said friends of the Complainant and again harassed and extended threats to his family members. In the meantime the police party arrived and arrested the accused.

3. The Petitioner/accused earlier applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed, vide order dated 02.07.2020. Thereafter his similar request was also declined by the learned

Additional Sessions Judge (West), Islamabad, vide order dated 13.07.2020; hence, this petition for bail after arrest.

4. Learned counsel for the petitioner submitted that the petitioner is innocent who has falsely been involved in the present case; that the offences mentioned in the FIR are not attracted at all; that neither there is anything available on record against the petitioner nor there is any direct or indirect witness against the petitioner; that identification parade has not been conducted which is mandatory in cases registered against unknown accused; that case of the petitioner is of further inquiry falling within the ambit of Section 497(2) Cr.P.C; that the investigation to the extent of petitioner has been completed and he is no more required by the police; that challan has been submitted and the charge against the petitioner/accused has been framed; that the alleged offences do not fall within the ambit of prohibitory clause of section 497 Cr.PC; that there is no likelihood of petitioner's abscondance and tampering with the prosecution evidence. Learned counsel lastly contended that since, petitioner is previously non-convict and is behind the bars since his arrest and is ready to furnish surety bonds to the satisfaction of the court if enlarged on bail.

5. Learned counsel for complainant/Respondent No.2, submitted that the principal accused nominated in the FIR is Iqbal *alias* Bala Gujjar who is involved in numerous cases of abducting, kidnapping for ransom and has been convicted in many cases. He operates his criminal activities with other offenders as a gang and the present accused/petitioner is his accomplice. He placed on record a Suo Moto case of Hon'ble Peshawar High Court, whereby, perpetual warrant of arrest of said Iqbal has been issued. The learned counsel referred and read out provisions of sections 34, 452, 506(ii), 365 & 391 PPC, mentioned in the FIR as invoked against the petitioner, and submitted that all the ingredients of sections are satisfied as the complainant's driver namely Arshad and his two friends namely Anwar Zeb and Tariq Ameen were intercepted on the road with the intention of kidnapping and were taken to a flat apparently belonging to the accused petitioners where they were kept illegally. Learned counsel further contended that wrong mentioning of section in the FIR would be of no benefit to the petitioner/accused; that all the three persons who were intentionally kidnapped and thrashed/beaten to obtain information about the whereabouts of the complainant were then brought to the house of the complainant where the petitioner harassed and assaulted the wife and minor daughter of the complainant; that one Tariq Ameen fled from the house and informed the police on 15 and thereafter all the accused persons were caught red-handed and were taken to the police station where the complainant arrived and identified all the accused/petitioners as they were

known to him; that thereafter the complainant registered FIR against all the accused. He submitted that the CCTV Footages are available on record where intercepting and snatching vehicle of the complainant by the accused is clearly visible which also makes a case of robbery and dacoity. Statement u/s 161 Cr.PC of the abductees as well as the wife of the complainant have been recorded on the same day and their statement u/s 164 Cr.PC is also on the police record and sanctity is attached to the statement u/s 164 Cr.PC; that threatening messages through whatsapp by the accused/petitioner Muhammad Siddique before the incident is also on record; that recovery of a pistol/weapon has been effected from the possession of the petitioner, vide recovery memo and is the part of police record; that any agreement between the parties would not grant permission to the accused/petitioners to resolve the disputes by extending threats and showing muscles. He, in view of the above submissions, submitted that the petitioners namely Muhammad Siddique, Rehman Gul and Shiekh Aun are not entitled for concession of bail as they are involved in heinous criminal activities.

6. Learned State counsel along with the I.O. of the case, furnished the police record and while endorsing the arguments of the learned counsel for Complainant submitted that the accused petitioner along with other co-accused are involved in heinous offences of abduction for ransom and house trespass and sufficient incriminating material is available against him on record and in view of the facts and circumstances, the petitioner/accused is not entitled for concession of bail.

7. Heard arguments of learned Counsel for the petitioner, learned counsel for complainant as well as learned State Counsel and have also perused the police record submitted during the hearing of the case.

8. Perusal of the record submitted by the Investigating officer shows that FIR was registered by the complainant mainly for abduction for ransom, tress-passing the house of the complainant as well as beating the complainant's driver, friends and family members. Apart from that it has also been mentioned in the opening sentences of the FIR that the accused earlier abducted the petitioner for ransom but he managed to escape but that incident was not reported earlier by the complainant to the police and has been made part of the present FIR. It is strange to note that the accused is nominated in the case of abduction for ransom and trespassing, whereas, offence of robbery has also been included later on but recovery of any weapon has not been effected from the accused. Apart from that it is also surprising that allegations of abduction of complainant's driver and friends have been leveled against accused but it is also mentioned in the FIR that the accused brought the

alleged abductees to the house of complainant with them. Moreover, medical report of the complainant's driver and his friends or family members who were allegedly beaten by the accused, has also not been conducted. The said facts create serious doubts about the 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 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".

9. During his arguments learned counsel for the complainant submitted that the alleged accused/petitioners after their arrest from the spot were taken to the Police Station where the complainant later arrived and identified them as he knew them. It is not understandable when he knew all the accused then why he did not nominate Muhammad Siddique and Rehman Gul while registering FIR and specifying their role in the commission of offence. Moreover, there is nothing available on record regarding commission of offence except photographs in which two vehicle can be seen intercepting one vigojeep but same required to be corroborated with the direct and circumstantial evidence and its veracity can be determined at the time of trial after recording of evidence instead at the time of bail as deeper appreciation of record is not permissible at bail stage rather only tentative assessment is to be made. Thus, in light of said observations, case of the accused becomes one of further inquiry under Section 497(2) Cr.P.C. 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)**. Further, challan has already been submitted and charge has been framed, whereas, petitioner is incarcerated since, his arrest on 22.06.2020. It has been observed by the august Supreme Court of Pakistan in the case of **"Manzoor and 4 others v. the State" (PLD 1972 SC 81)** that:-

"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"

Since, the challan in the present case has already been submitted and the charge has been framed, therefore, there is no likelihood of tempering with the

record by the petitioner/accused. Further there is no apprehension of the petitioner/accused for abscondence.

10. For the foregoing reasons, I am of the considered view that the accused petitioner is entitled for concession of bail. Reliance in this regard may also be usefully made to the following principles laid down by the Hon'ble Supreme Court in the case of **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)**:-

“The bail will be declined only in extra ordinary and exceptional cases, for example-

- (a) Where there is likelihood of abscondence 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.

11. For what has been discussed above, this petition is accepted and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 3,00,000/- (Rupees Three Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

12. 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