

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Crl.Misc.No.294-B/2019

Abdul Wahab

**Versus**

The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**28.05.2019**

**M/s Imran Ullah Khan and Mian Saifullah, Advocates for the petitioner**  
**Mr. Sadaqat Ali Jahangir, learned State Counsel with Yaseen S.I.**  
**Mr. Mohsin Khan Abbasi, Advocate for respondent No.2/complainant**

Through the instant criminal miscellaneous application, the petitioner, Abdul Wahab, seeks post-arrest bail in case F.I.R. No.29, dated 21.01.2019, under Sections 406, 448, 506(ii), 511, 148, 149 and 109 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Khanna, Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 03.04.2019 and 19.04.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the accused/petitioner submitted that the petitioner has falsely been implicated in this case; that the possession of house in question was not forcibly taken by the petitioner from the complainant; that the petitioner sold the house in question to the complainant's wife vide registered sale deed dated 26.09.2018 and its possession was also given to her; that no recovery of firearm was effected from the petitioner; that in the FIR, no specific role has been ascribed to the petitioner; that from the

contents of the FIR, the alleged offences do not attract in the petitioner's case; that there is a substantial delay in lodging the FIR; that the offences alleged to have been committed by the petitioner do not fall within the ambit of the prohibitory clause of Section 497 of the Criminal Procedure Code, 1898 ("Cr.P.C."); and that the petitioner is in judicial custody since 24.03.2019 and not required for any further investigation. Learned counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned counsel for the complainant/respondent No.2 assisted by learned State Counsel, vehemently opposed the petition by stating that the petitioner is nominated in the FIR and the role ascribed to him was that he, in connivance with other co-accused, after selling the four *marla* single storey house in *khasra* No.2763 situated at *Khanna Dak* Tehsil and District, Islamabad, to the complainant's wife, tried to dispossess the complainant and his family from their house; that the petitioner is a member of *qabza mafia* and in order to dispossess the complainant and his family, on 23.11.2018, co-accused Majid made a telephonic call to the complainant and extended him threats to handover the possession of the house in question; and that on 24.11.2018, co-accused Majid and five/six unknown persons along with firearms came to the complainant's house and again extended the complainant and his wife threats of dire consequences and directed them to immediately leave the house and its possession

be given to them. Learned counsel prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

6. Brief facts as stated in the FIR are that the complainant had purchased a house measuring four *marlas* in *khasra* No.2763 situated at *Khanna Dak* Tehsil and District Islamabad from co-accused Muhammad Fayyaz vide *iqrarnama* against the sale consideration of Rs.21,00,000/-. It is also reported in the FIR that the said house was mutated/transferred in the name of the complainant's wife by the accused/petitioner (Abdul Wahab), vide registered sale deed No.16263, dated 26.09.2018. On 23.11.2018, co-accused Majid made a telephonic call to the complainant and extended threats to him of dire consequences in case he failed to hand over the possession of the house in question. On 24.11.2018, said Majid and five/six other unknown persons came to the complainant's house and extended threats again and tried to dispossess the complainant and his family from their house.

7. Perusal of the FIR shows that the complainant had purchased the house in question through co-accused Muhammad Fayyaz Khan against the sale consideration of Rs.21,00,000/-. As per the contents of the FIR, the said house was in the name of the accused/petitioner, who transferred/mutated the same in the name of the complainant's wife vide registered sale deed No.16263, dated 26.09.2018. The photocopy of the said registered sale deed was appended with the

record on the basis of which the complainant claims to be the owner of the house in question. The role ascribed to the accused/petitioner in the FIR was apparently that an *iqrarnama* was executed between co-accused Muhammad Fayyaz Khan and the complainant and as a result, the accused/petitioner (Abdul Wahab) transferred the land in question in the name of the complainant's wife vide registered sale deed referred to above. As regards the complainant's contention that accused/petitioner in connivance with other co-accused after selling the house in question extended threats to the complainant and his family of dire consequences so as to deprive them of the house in question, there is no direct allegation levelled in the FIR against the accused/petitioner that he either extended threats of dire consequences or even attempted to dispossess them from the house in question. Undoubtedly, the house in question has a long chequered history as revealed through the report dated 17.01.2019, which was sent by D.S.P./S.D.P.O. Shehzad Town Circle to the Superintendent of Police Rural Zone, Islamabad. The said report further shows that house in question was earlier sold to different persons, including the complainant who also claims to be its owner on the basis of registered sale deed referred to above. The record also shows that civil litigation in respect of the house in question is also pending before the learned Civil Court. There is nothing on the record to show that the petitioner had made any effort to forcibly dispossess the complainant and his family from the house. Even otherwise, there is

an unexplained delay of more than one and a half month in lodging the FIR. The accused/petitioner's connivance with the co-accused Majid, who was alleged to have extended threats to the complainant and his family in order to dispossess them of their house, and all the accused belonged to a *qabza mafia* are yet to be proved at the trial stage. As such, in the circumstances of the case mentioned above, I have found the case against the petitioner, in my tentative assessment of the material placed on record, as one of further inquiry as envisaged under subsection (2) of Section 497 Cr.P.C. The petitioner has remained incarcerated since 24.03.2019 and the investigation is said to have been completed.

8. In this view of the matter, the instant petition is allowed and the petitioner is admitted to bail subject to furnishing of bail bonds in the sum of Rs.10,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned Trial Court unless exempted by the learned Trial Court. In case, the petitioner fails to appear before the learned Trial Court on any date of hearing, the bail shall stand cancelled.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Qamar Khan\*