

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

Criminal Misc. No. 171-B/ 2020
Jahangir
Vs
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.
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03.	18.03.2020	Raja Arshad Hayat, Advocate for petitioner, Mr. Muhammad Atif Khokhar, State Counsel, Complainant in person, Umer Hayat and Mansoor Ahmed SIs with record.
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This is post-arrest bail petition by accused-petitioner (Jahangir) in case FIR No. 195, dated 29.08.2018, under Sections 395/412 PPC, Police Station Noon, Islamabad.

2. Precisely, facts necessary for the disposal of instant bail application are that respondent No.2/complainant informed the police that on 28.08.2018 at 04:00 a.m. (morning) while household were asleep, 7/8 unknown persons entered in his house after climbing the external walls; that the intruder party was equipped with firearms and committed dacoity of mobile phones, cash and five tola gold ornaments valuing Rs.343,000/- on gun point.

3. Learned counsel for the petitioner contends that accused/petitioner is not nominated in the FIR; that there is delay of one day in lodging the FIR; that there is a general allegation against 7/8 unknown persons and no specific role has been attributed to the petitioner; he is behind the bars since arrest i.e. 08.02.2019 and identification parade conducted by the prosecution was joint; in this respect the Hon'ble Supreme Court of Pakistan

in case reported as *Hakeem Vs The State* (2017 SCMR 1546) held that joint identification parade retains no evidentiary value; even recovery is joint; that prior to identification parade, audio/video of the petitioner was made and later on shown to the complainant/ witnesses, thereafter the complainant identified the accused. Learned counsel in support of his submissions, placed reliance upon case laws reported as 2017 SCMR 1189, 2017 SCMR 1546, 2012 PCr.LJ 866, 2007 MLD 444, 2016 PCr.LJ 1206 and 2011 YLR 2405.

4. On the other hand, learned State Counsel argued that petitioner has been correctly identified in identification parade by the complainant/respondent No.2; that as far as stance of petitioner regarding showing video and pictures of the petitioner to the complainant is concerned, same is totally baseless as no details are given that where and when said video/pictures were made and when it was shown to the complainant; that it is just an aspersion that requires appreciation of evidence and unworthy of consideration at bail stage; that a gold ring was recovered from the accused/petitioner which is in possession of the prosecution; that delay of approximately one day in reporting the matter to the police was due to shock and worries of the said incident; that the delay has sufficiently been explained by the complainant. Lastly, he submits that challan has already been submitted on 02.05.2019; charge has been framed; trial is in progress and the case is fixed for evidence, therefore, petitioner is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. As far as delay of one day in lodging the FIR is concerned, apparently the same had been sufficiently explained by the complainant and yet, if any impact of the same is on the case, that is function of the trial Court to consider it at trial stage and merely on this ground bail cannot be allowed. In like case, the Hon'ble Supreme Court of Pakistan in a Judgment reported as Mazhar Iqbal Vs The State and another (2010 SCMR 1171) had enunciated a law where two days' delay was there, the learned High Court granted bail but the same was cancelled by the Hon'ble Supreme Court of Pakistan not considering it sufficient for grant of bail in paragraph No.3 of the said judgment it was held that:-

“In the present case the explanation of the delay in lodging the FIR, furnished by the complainant can be examined by the trial Court at the appropriate stage when the evidence is recorded in the case and the same is also subject to cross examination. Thus in the peculiar circumstances of the instant case, this require deeper appreciation of the evidence which cannot be undertaken at this stage.”

7. The police had recovered a gold ring connected with the occurrence from the accused/petitioner and this recovery corroborates the contents of the FIR because it is narrated in the FIR that gold ornaments were taken by the said accused persons. Therefore, the investigation is in line with the contents of the FIR, *prima facie* connecting the accused with the version of complainant through oral as

well as documentary evidence, collected so for.

Not one iota of enmity of respondent No.2/complainant with present petitioner/accused has been alleged. No motive has been put forward, no malice has been shown, then why complainant would falsely identify the accused. Furthermore, even at the time of identification parade no objection had been taken by the accused/petitioner regarding any motive or enmity of the complainant with him. Even no such allegation had been levelled against the police.

8. The petitioner has criminal record and the details of cases registered against him are as under:-

- i. FIR No.479/2018 u/s 399/402 PPC, P.S. Saddar, Wah Rawalpindi.
- ii. FIR No.401/2018, u/s 395 PPC, P.S. Saddar, Wah Rawalpindi.
- iii. FIR No.171/2017, u/s 392 PPC,
- iv. FIR No.202/2017, u/s 395 PPC
- v. FIR No.192/2018, u/s 395 PPC
- vi. FIR No.194/2018, u/s 395 PPC
- vii. FIR No.199/2018, u/s 395 PPC &
- viii. FIR No.222/2018, u/s 395 PPC,
All registered at P.S. Noon, Islamabad.

The aspect of recovery of gold ring and the alleged involvement of petitioner in eight other cases of like nature, cannot be overlooked. In this respect I am guided by the law adjudicated by this Court in case titled **Ameer Hamza Vs The State and others** (2017 PCr.LJ 21) wherein it is held in paragraph 8 as under:-

“The nature of the offence, the recovery of the official motorcycle, the material collected by the prosecution and alleged involvement of the petitioner in ten other registered criminal cases has been rightly made the basis by the learned Judicial

Magistrate Islamabad-East and learned Additional Sessions Judge-II Islamabad-East vide their respective orders dated 24.06.2016 and 12.07.2016 for forming an opinion that the petitioner falls within the ambit of the expression 'desperate' and 'dangerous criminal' and, therefore, not entitled to be released on bail."

9. The identification parade was conducted within fourteen days after the arrest of accused/petitioner. After the arrest of accused, on next day, he was sent to Adyala Jail therefore, there was no chance that accused was exposed to the complainant in any manner. The identification parade was held under the supervision of a Magistrate wherein accused/ petitioner was correctly identified by the complainant of the case. As far as submission of the learned counsel that complainant was previously shown the video clips and pictures of the accused/petitioner is concerned, the same at this stage is unsubstantiated from record. It is just an oral submission at the time of arguing the bail application which cannot be considered at this stage. If any objection of the petitioner regarding how the identification parade was conducted, that could be decided after the recording of evidence of the parties by the learned Trial Court.

10. The offences attributed to the accused/ petitioner entail major punishment i.e. imprisonment for life; non-bailable and non-compoundable and are attracting the prohibitory clause of section 497 of Cr.PC.

11. The material available on record i.e. recovery of gold ring, identification of accused/ petitioner, his involvement in eight cases of like nature, punishment provided for the offence being imprisonment for life and without going into deeper appreciation of the evidence at this stage, on the basis of tentative assessment, this Court has come to the conclusion that petitioner is not entitled for the concession of bail.

12. The referred case law reported as 2017 SCMR 1189 & 2017 SCMR 1546 elaborate principles of identification parade after full length trial in appeal; the facts of case law reported as 2012 P Cr L J 866 & 2007 MLD 444 are distinct while in case reported as 2016 P Cr L J 1206, bail was granted to an accused on the ground of statutory delay in conclusion of trial, therefore, none of them extend any help to the petitioner due to having distinct facts and circumstances.

13. In view of above, instant post arrest bail petition being devoid of merits is dismissed.

14. Needless to mention that above is only tentative assessment for the purpose of instant bail petition only and shall not affect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran