

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 875-B of 2020.

Rehan Sher.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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06.08.2020. Mr Naveed Shahzad Chaudhry, Advocate for the petitioner.
Syed Shahbaz Shah, State Counsel.
Mr Sajid, ASI with record.

The petitioner Rehan Sher son of Islam-ud-Din has sought post arrest bail in case F.I.R. No. 85, dated 18.03.2019, registered under sections 392 and 411 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Sihala, Islamabad.

2. Brief facts as narrated in the FIR are that on 16.03.2019 at about 03:00 a.m., some unknown persons while armed with weapons had forcibly entered the house of the complainant. They took away cash, gold ornaments, mobile phones, vehicles and other valuable items. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is not nominated in the FIR; no specific role has been attributed to the present petitioner; the petitioner has been involved in the instant case after recording of statement of the co-accused; no incriminating material was recovered from the petitioner despite being on physical remand; the petitioner is innocent; the petitioner has no concern whatsoever with the alleged offences; the complainant did not know the role of the petitioner in the instant occurrence; allegations against the

petitioner are false, frivolous and vexatious; story as narrated in the FIR is false and concocted; the petitioner has been falsely involved in the instant case; so far not a single witness has been examined; the petitioner has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner has been incarcerated in the instant case for more than fifteen months; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; further incarceration of the petitioner will not serve any useful purpose; offences do not come within the ambit of prohibitory clause of section 497 of Cr.P.C.; there is no direct or indirect evidence against the petitioner; the petitioner has not committed the alleged offences; identification parade was not conducted in accordance with law; number of unknown persons who entered in the house of the complainant has not been mentioned in the FIR; offences are not attracted against the petitioner; allegations against the petitioner require further inquiry; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; mere recovery does not constitute an offence under section 392 PPC, hence prayed for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Sajid, ASI. They have opposed the grant of bail. It has been argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the petitioner; the petitioner is also involved in another criminal case of the same nature; the petitioner in the instant case was arrested after conducting proper identification parade; the petitioner is a habitual offender and, if he is released on bail, he would repeat the offence; the conduct of the accused brings his case within the

exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 Cr.P.C., as there is another criminal case of the same nature registered against him. Offence under section 392 PPC was deleted and sections 395 and 412 PPC were added vide Zimni nos.4 and 16, dated 18.04.2019. They have prayed for dismissal of the instant bail petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record reveals that the occurrence had taken place on 16.03.2019, whereas the instant FIR was registered on 18.03.2019 i.e. after a delay of two days. The record further reveals that the petitioner was arrested during investigation relating to another case i.e. FIR no. 120 of 2019, dated 17.04.2019, registered under sections 399/402 PPC at Police Station Sehala, Islamabad. The legality of the identification parade raises questions. Whether or not the identification parade conducted in the instant case is sustainable needs further probe. Moreover, the investigating officer was not able to show that the items stated to have been recovered from the petitioner were mentioned in the FIR. This factor makes it a case of further probe. Investigation qua the petitioner has been completed and he is no more required for the purposes thereof. The petitioner has been incarcerated for more than fifteen months in the instant case. In the circumstances, the case of the petitioner comes within the ambit of further probe. His continued custody is not likely to serve any beneficial purpose at this stage as the investigation has been completed. Nothing has been placed on record to form an opinion regarding apprehension that the petitioner may abscond

or tamper with the prosecution evidence. This Court is, therefore, of the opinion that the petitioner is entitled to bail.

7. It has been aptly observed by the august Supreme Court in the case of *"Manzoor and 04 others versus The State"* reported as [PLD 1972 S.C. 81] as follows:

"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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.500,000/- (Rupees five hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court. The petitioner will be released provided his incarceration is not required in some other case.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

Asad K/*