

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 284-B of 2019.

Shaukat Ali.
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.
-------------------------------	--------------------	--

15.05.2019. Miss Tasleem Abbasi, Advocate for the petitioner.
Mr Rabi-bin-Tariq, State Counsel.
Mr Azmat Bhatti, ASI with record.

The petitioner Shauakt Ali son of Amanullah has sought post arrest bail in case F.I.R. No. 236, dated 15.10.2018, registered under section 394 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Noon, Islamabad.

2. Brief facts as narrated in the FIR are that on 14.10.2018 at about 11:30 p.m. the present petitioner alongwith other co-accused while committing robbery had caused firearm injuries to the complainant. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is innocent and has been falsely involved in the instant case; story as narrated in the FIR is concocted and baseless; the petitioner did not commit the alleged offence; the petitioner has no concern with the alleged occurrence; the offence is not attracted against the petitioner; the petitioner was not nominated in the FIR; there is delay in conducting the identification parade; the petitioner has been incarcerated for more than

six months; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; no incriminating material has been recovered from the petitioner; the petitioner is previously non-convict and non-record holder; allegation against the petitioner is that of further inquiry; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; mere recovery does not constitute an offence under section 394 PPC; hence urges for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Azmat Bhatti, ASI. They have opposed the grant of bail. It was argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the accused; the petitioner is a hardened and desperate criminal, if he is released on bail, he will repeat the offence; reported under section 173 of Cr.P.C. has been submitted the learned trial Court and the trial is to commence shortly; 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. 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 the record shows that the petitioner was not nominated in the FIR and no specific role has been attributed to him. The alleged occurrence had taken place on 14.10.2018, whereas the identification parade was conducted on 28.01.2019 i.e. after delay of

three and a half months. Recovery has been affected from other co-accused namely, Adil and firearm injury is also attributed to him. The role of the petitioner in the instant case requires further probe. Whether or not the identification parade was conducted in accordance with law also needs further probe. The report under section 173 Cr.P.C. has been submitted before the learned trial Court. A plain reading of the FIR in the instant case shows that further probe is required whether ingredients of the offence under section 392 of PPC are fulfilled. No incriminating material was recovered from the petitioner. Investigations qua the petitioner have been completed and he is no more required for the purposes thereof. The role of the petitioner definitely requires further probe. The petitioner has been incarcerated for more than six months. Further incarceration of the petitioner will not serve any useful purpose. In the facts and circumstances of the instant case, the continued incarceration of the petitioner is not likely to serve any beneficial purpose at this stage.

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".

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. 5,00,000/- (Rupees five hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

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/**