

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.927-B /2020

FARHAD ALIAS FAWAD Vs The State & another

Serial No. of order/ proceeding.	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
02	31.08.2020	Ch.Nisar Ahmad Gujjar Advocate for petitioner. Mr. Zohaib Hassan Gondal, State counsel with Shamas Inspector & M. Nawaz SI.

GHULAM AZAM QAMBRANI, J.

The petitioner [Farhad alias Fawad] seeks post arrest bail in case FIR No. 246, dated 31.12.2017, under sections 395, 412 PPC, registered at Police Station Noon, Islamabad.

2. Brief facts of the case are that on the written report of the complainant [Tariq Hussain Shah] F.I.R No. 246 was lodged against unknown accused persons stating therein that when he opened the main gate of his house to see-off his cousin Basharat Shah, suddenly six persons armed with pistol entered into the house and locked all persons of the family in a room. They started searching his house and took away 20 tolas gold, consisting of bangles, necklace, ear rings etc including amount of Rs.1,25,000/- on gun point. They also snatched amount of Rs.12,000/- from his cousin.

3. The petitioner applied for post arrest bail before the learned Court of Judicial Magistrate Section-30, Islamabad, which was rejected vide order dated 08.07.2020. Thereafter, the petitioner/ accused applied for bail after arrest before the learned Additional Sessions Judge-West, Islamabad, which met the same fate vide order dated 23.07.2020, hence the instant petition.

4. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in this case; that the petitioner has not committed any offence as alleged in the FIR; that

recovery of only Rs.3000/- has allegedly been shown as recovery from the petitioner; that no other material has been recovered from his possession; that the petitioner was involved in the case on the disclosure of co-accused Ahsanullah and one Liaqat, who later on, have been discharged from the case; that on the same set of evidence, the co-accused Namely Nawab Khan has been granted bail by the learned ASJ, Islamabad, vide order dated 27.06.2020 and the petitioner is also entitled for the same relief on the basis of rule of consistency; that there is no evidence to connect the petitioner with the commission of offence; that the petitioner is previously non-convict and case of present petitioner falls within the ambit of further inquiry. Further contended that the petitioner is behind the bars since his arrest; that the investigation of the case has been completed and petitioner is no more required for further investigation. Lastly prayed for acceptance of this bail petition.

5. On the other hand, learned State counsel vehemently opposed the grant of bail to the petitioner contending that the petitioner was identified during the course of identification parade by the complainant; that the offence is not bailable and the offence falls within the prohibitory clause of Section 497 Cr.P.C. Lastly urged for dismissal of the instant bail petition.

6. I have heard the arguments of learned counsel for the petitioner, State Counsel and have perused the material available on record with their able assistance.

7. Perusal of the record reveals that the complainant has mentioned six unknown culprits, who have allegedly entered into his house and committed dacoity. The physical features and specific role has not been attributed to any of the culprit. It is transpired from the record that one Ahsan Ullah, Liaqat and Rehman Ullah, who were arrested in case F.I.R No. 66/2018 registered at Police Station Shamas Colony, Islamabad, they made disclosure that they alongwith petitioner have committed dacoity in the house of

complainant, but later on they were discharged from the case. It is also transpired from the record that recovery of Rs. 6000/- have been shown from the possession of co-accused Rehman Ullah. Similarly, Rs.7000/- have also been shown as recovery from the custody of Ahsan Ullah, but later on both of them were discharged. The identification parade was not held in accordance with the principles laid down by the Hon'ble Supreme Court, therefore, the case of petitioner falls within the ambit of further inquiry in terms of the Section 497 Cr.P.C. At this stage, deeper appreciation of material available on record is neither desirable nor permissible. The guilt of accused is yet to be determined by the learned trial Court after recording of the evidence. The Hon'ble Supreme Court of Pakistan in the case reported as "Manzoor & four others Vs The State" [PLD 1972 SC 81], it has held as under:-

" It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. 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. So far as the contention of the learned State counsel that similar nature of other cases have already been registered against the petitioner is concerned, there is no previous record of the petitioner to have been convicted in the said cases as such, he cannot be treated as hardened criminal and

it cannot be a ground to withhold the concession of bail. Reliance in this regard is placed upon the case reported as "Babar Hussain Vs. The State and another" (2020 SCMR 871) wherein it has been held as under:-

As far as the contention of learned Law Officer that the petitioner is involved in six other criminal cases would not disentitle him from the relief sought for as learned Law Officer frankly conceded that petitioner has not been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance in this regard is placed upon cases titled as "Moundar and others v. The State" (PLD 1990 SC 934) and "Muhammad Rafique v. The State" (1997 SCMR 412).

9. For what has been discussed above, I allow the petition and direct the petitioner to be released on bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (Two lacs) with one surety and P.R bond of the like amount to the satisfaction of learned trial Court.

10. It is needless to mention here that the observations made hereinabove are tentative in nature and shall not design to influence the trial.

(GHULAM AZAM QAMBRANI)
JUDGE

S.Akhtar