

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.383-B/2019
Shehbaz Ahmed
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.
	10.06.2019	Mr. Qasim Mehmood, Advocate for the petitioner Mr. Sadaqat Ali Jahangir, learned State Counsel with Gulfaraz S.I.

Through the instant criminal miscellaneous petition, the petitioner, Shehbaz Ahmed S/o Amjid Mehmood, seeks bail after arrest in case F.I.R. No.502, dated 20.12.2018, under Sections 380, 411 and 457 of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Lohi Bher, Islamabad.

2. ◦ Earlier the petitioner's post-arrest bail petitions were also dismissed by the learned Courts below, vide orders dated 02.04.2019 and 24.04.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the petitioner submitted that the petitioner was not nominated in the FIR; that there is a substantial delay in lodging the FIR, which makes the prosecution's case doubtful; that during the investigation, nothing has been recovered from the accused/petitioner; that recovery, if any, has been planted by the police and the same is violative of mandatory provisions of Section 103 Cr.P.C.; that the co-accused, Muhammad Kamran Bukhat has already been granted bail by the learned Additional Sessions Judge, vide order dated 30.01.2019; that the petitioner is also entitled to the concession of bail on the principle of consistency; that the case against the accused/petitioner is one of further

inquiry within the meaning of Section 497(2) of the Cr.P.C.; and that the petitioner is behind bars since his arrest and is no more required by the police for further investigation. Learned counsel prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned State Counsel opposed the bail petition by stating that although the petitioner is not nominated in the F.I.R., but during the course of investigation, stolen items were recovered from the petitioner, which *prima-facie* connects him with the commission of alleged crime; that the complainant had forgiven the co-accused, Muhammad Kamran Bukhat on the basis of which he was released on bail by the learned Trial Court; and that the partial recovery of alleged stolen items from the petitioner disentitles him for the discretionary relief of post-arrest bail even on the rule of consistency. Learned State Counsel prayed for the bail petition to be dismissed.

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

6. The prosecution story narrated in the FIR by the complainant, Sohail Qaiser, is that on 29.11.2018 at about 12:00 a.m. when he along with his family came back to his house after attending a marriage, they saw that the house lock was broken and their luggage was found scattered. Upon this, the complainant informed the Bahria Security Office. It is also reported in the FIR that Allah Ditta Waqas personnel of Police Station Lohi Bher was on duty, who along with Bahria Security came at the place of occurrence/the complainant's house, and after checking the house Rs.21,50,000/- eight *tolas* of

gold, four gold necklace, one Rado watch, one black berry Z-10 mobile phone, a computerized number plate (UW.946), and a BMW Receiver, were found missing.

7. The FIR in question was registered against unknown persons who were alleged to have committed theft in absence of the complainant. The record shows that on 22.12.2018 at about 4:20 p.m. Shaheen Iqbal Constable C.I.A. Staff was on patrol duty at Express Highway Service Road Khanna East Islamabad. In the meanwhile, two persons riding on a Honda City Car came from Service Road. The C.I.A. staff stopped the said car and checked the persons sitting in it. On inquiry, the person sitting on the driving seat disclosed his name as Muhammad Kamran Bakht, while the person sitting on the front seat disclosed his name Shehbaz Ahmed (the present petitioner). On his personal search, 30 bore pistol along with rounds were recovered. Furthermore, a token bearing No.543 issued by NADRA Registration Authority for national identity card, and a mobile phone set were recovered. On the inspection of the dicky of the vehicle, a bag (army commando colour) was recovered and on its further search, a silver colour receiver DWN, lead (black in colour), two sets of plastic gloves, one wrench, one cutter, and one set of mask were recovered.

8. Undoubtedly, the items recovered from the petitioner are altogether different from the items alleged to have been stolen for which the FIR in question had been registered against the unknown persons. Furthermore, there is a delay of about twenty two days in lodging the FIR. All such factors make the case against the petitioner as one of

further inquiry. Perusal of the order dated 30.01.2019 shows that the post-arrest bail was granted to the co-accused by the learned Additional Sessions Judge, on the basis of the statement of the complainant to the effect that *"he has forgiven the accused in the name of Almighty Allah and he has no objection if petitioner be released on bail and in this regard he also sworn affidavit Mark-A."* Whereas the learned Additional Sessions Judge vide order dated 24.04.2019 dismissed the petitioner's post-arrest bail petition with the observation that *"record further divulges that after arrest the petitioner has got recovered stolen articles."* As mentioned above, the petitioner and his co-accused (who was granted bail) were arrested on 22.12.2018 at about 4:20 p.m. the C.I.A. Staffs who were on patrolling duty at Express Highway Service Road Khanna East Islamabad and the items lying in the vehicle were recovered jointly from the petitioner and his co-accused. Therefore, in my view, the learned Additional Sessions Judge should have extended discretionary relief of post-arrest bail in favour of the petitioner as well after ascertaining the record thoroughly by applying the principle of consistency.

9. For the reasons mentioned above, the instant petition is allowed and the petitioner is admitted to bail subject to furnishing of bail bonds in the sum of Rs.1,00,000/- 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.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*