

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 768-B of 2019.

Azhar Jillani.

Vs

The State, etc.

S. No. of order/ proceedings	Date of proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.	02.01.2020.	Agha Syed Faisal Hussain Shah, Advocate for the petitioner. Mr Tufail Shahzad, Advocate for the complainant. Mr Rabi bin Tariq, State Counsel. Mr Saleem Raza, SI and Mr Rizwan, ASI with record.
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The petitioner Azhar Jillani son of Ghulam Jillani has sought post-arrest bail in case FIR No. 328, dated 21.08.2018 registered under section 406/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**"), at Police Station Karachi Company, Islamabad.

2. The brief facts, as alleged in the FIR, are that the complainant had handed over possession of ten vehicles to the petitioner and other co-accused for commercial use and in this regard an agreement was also executed. It is alleged that the petitioner and other co-accused later misappropriated the vehicles and thus had committed the offence of criminal breach of trust. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the instant case is based on malafide intention of the complainant and

has been registered to harass and humiliate the latter; the co-accused has been enlarged on bail and the petitioner is also entitled to the same relief, keeping in view the rule of consistency; the petitioner is innocent and has not committed the alleged offence; the petitioner has been falsely involved in the instant case with connivance of the complainant; there is no direct or indirect evidence against the petitioner; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; no incriminating material was recovered from the petitioner; the offence is not attracted against the petitioner; the offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner has been incarcerated for more than two months; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the case against the petitioner is that of civil nature; the petitioner is previously non-convict and non-record holder; the complaint is based on surmises and conjectures; the petitioner has no concern whatsoever with the alleged offence; the petitioner has not misappropriated the alleged vehicles; no recovery has been affected from the petitioner; necessary ingredients of the offence under section 406 of PPC have not been fulfilled; according to the contents of the FIR the offence under section 406 of PPC is not attracted; story as narrated in the FIR is false, frivolous and concocted; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the case against the petitioner is that of further probe and has, therefore, urged for the grant of post arrest bail.

4. The learned State Counsel assisted by the learned counsel for the complainant has appeared alongwith Saleem Raza, SI and Rizwan, ASI. They have opposed the grant of bail and have argued that the petitioner is nominated in the FIR; specific role has been attributed

to the petitioner; there are ten other cases of the same nature against the present petitioner; the petitioner is a habitual offender; the petitioner and other co-accused had misappropriated the vehicles of the complainant; the report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial of the case is to be commenced shortly; the offence under section 406 of PPC is made out as the petitioner and other co-accused had misappropriated the vehicles; they have prayed for the dismissal of the instant bail petition.

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

6. The offence included in the FIR i.e. section 406 PPC is, admittedly, of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of *Zafar Iqbal versus Muhammad Anwar and others* [2009 SCMR 1488], a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

- i) Where there is likelihood of abscondance of the accused;
- ii) Where there is apprehension of the accused tampering with the prosecution evidence;

- iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- iv) Where the accused is a previous convict.

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of "*Subhan Khan versus The State*", reported as [2002 SCMR 1797] and "*Tariq Bashir and five others versus The State*", reported as [PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of "*Riaz Jafar Natiq Versus Muhammad Nadeem Dar and others*", reported as [2011 SCMR 1708].

8. Admittedly the vehicles alleged to have been misappropriated are now in possession of the complainant. Prima facie, it appears to be a case which is more in the nature of a civil dispute. Furthermore, the date and time of the alleged occurrence has not been mentioned in the FIR. Whether or not the ingredients of section 406 PPC are satisfied in the instant case needs further probe. The report under section 173 Cr.P.C. has been submitted before the learned trial Court. Investigations qua the petitioner have been completed. The offence does not fall within the ambit of the prohibitory clause under section 497(1) of Cr.P.C. The co-accused has been enlarged on bail and thus on the touchstone of the principle of consistency a case is made out in favour the petitioner. The petitioner has been incarcerated for more than two months; therefore, his continued incarceration is not likely to serve any useful purpose at this stage. Record further shows that the petitioner has not been convicted in any other case. This Court is, therefore, of the view that the petitioner is entitled to be extended concession of post arrest bail.

9. 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.

10. In the circumstances, as mentioned above, this petition is **allowed** and the petitioner is **granted** post arrest bail, subject to furnishing bail bonds in the sum of Rs.100,0000/- (Rupee one million 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/**