

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.228-B/2020**

**Rustam Khan**  
Versus  
**THE STATE AND ANOTHER.**

*Petitioner by:* Mr. Muhammad Farooq, Advocate.

*Complainant by:* In person.

*State by:* Ms. Atif Khokhar, State Counsel.  
Mr. Jaffar, A.S.I.

*Date of Hearing:* 03.04.2020.

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**LUBNA SALEEM PERVEZ; J:** Through instant petition, petitioner seeks post arrest bail in case FIR No.248/2019, dated 27.06.2019, registered for offence under section 392 PPC, at Police Station Karachi Company, Islamabad.

2. The facts of the case are that the FIR was registered on the behest of complainant namely Rafaqat Mehmood s/o Muhammad Younas who is working as cashier in Super Drug Pharmacy, G-9 Markaz, Islamabad, against four unknown dacoits who while armed with pistols committed dacoity in the pharmacy on 26.06.2019 at 11:45 pm and after committing the offence fled away from the scene on two motorcycles with the amount of Rs. 2,30,000/- (approximately) and two mobile phones Nokia window (SIM No. 0315-5364349) and Hawaie Y3 model 2017 (SIM No. 0312-7109883) and EMI No.1/867849046772234, snatched from the employees present in the pharmacy.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed, vide order dated 10.12.2019, whereas, his similar request was also declined by the learned Additional Sessions Judge (West), Islamabad vide order dated 03.02.2020; hence, this petition for bail after arrest.

4. The prosecution case against the Petitioner/accused is that during investigating of the case, through EMI No.1/867849046772234, it was found out that snatched mobile phone during dacoity i.e. Hawaie Y3 model 2017, was

sold to a person by one Nizam ud Din Khilji who deals in sale, purchase and repairing of mobile phones. The said cell phone was given to him by Zeeshan Qamar who during investigation pointed out that the dacoity/robbery has been committed by the petitioner along with his four accomplices and he was not in their group while committing offence. On his pointation the present accused was nominated in the present case and on spy information petitioner was arrested on 20.10.2019, where after he admitted the commission of dacoity in the pharmacy on 26.06.2019. On his pointation the amount of Rs.30,000/- and other mobile phone was recovered from his residence which was deposited in mall khana through recovery memo.

5. Learned counsel for the petitioner submitted that he has no connection with the alleged offence and no direct incriminating material connecting him with the commission of offence has been found out during investigation. Learned counsel further submitted that petitioner was arrested two months prior to 20.09.2019, on which date his arrest was shown with malafide intentions and his identification parade was also conducted after a delay of one month and nine days. Learned counsel contended that as per FIR there were three employees present in the pharmacy, however, they have not been produced as witness and the prosecution is deliberately avoiding their production as witness; and that the Nizam-ud- Din Khilji has also not been associated as witness on his request. Learned counsel lastly contended that the prosecution is intentionally delaying the trial proceedings, however, the petitioner is ready to submit solvent surety before the Hon'ble Court if bail is granted to him.

6. Learned State counsel submitted that the petitioner has previously remained involved in similar offences and was nominated in FIR No. 537/2016, dated 28.07.2016, registered at Police Station Pir Wadhai, for offence u/s 380/211 PPC and FIR No. 01/2018, dated 01.01.2018, registered at Police Station Banni, Rawalpindi, for offence u/s 13(2A) of PAO for possession of unlicensed weapon. Learned State Counsel further submitted that Challan in the present case has already been submitted but the trial has not yet been commenced. Learned State Counsel contended that the identification parade was delayed due to sit-in demonstration on account of Azadi March in the city.

It was further contended that recoveries of Rs. 30,000/- and snatched mobile phones during dacoity has been made on petitioner's pointation which directly connects the Petitioner with the commission of heinous offence of robbery/dacoity and being an offence against the society, petitioner is not entitled to concession of bail as there is likelihood of repeating the offence by the Petitioner.

7. I have heard the learned counsel for the parties as well as learned State Counsel and have also perused the police record.

8. As per record submitted by the Investigating officer initially the FIR dated 27.06.2019, was registered against four unknown persons and thereafter, the case was transferred to CIA on 10.10.2019. The record reveals that during investigation, on 11.10.2019, a shop keeper deals in sale, purchase and repairs of mobile phones namely Agha Nizam ud Din was traced out through EMI number of snatched mobile Huwaie-Y3 model 2017 during dacoity, and the said shop keeper named one Zeeshan Qamar the person who sold the said mobile to him. Zeeshan Qamar when interrogated named Rustam Khan/the petitioner for committing of dacoity in the pharmacy. It has been observed from the police record that Asif Hussain Shah, the sales man of the pharmacy during his statement before the police revealed that three persons with covered faces and one wearing helmet entered the pharmacy for dacoity, however, the record further shows that the petitioner was accurately identified by the complainant during identification parade held after one month and nine days of commission of offence. Further the statements of main witnesses leading to the connection of offence with the petitioner were not recorded during investigation. The said facts creates serious doubts about the prosecution story and it is settled law that even for purposes of bail, law is not to be stretched in favour of the prosecution and if any benefit of doubt arises, it must go to the accused. The cases relied upon are **"Amir vs. The State" (PLD 1972 SC 277)**, **"Shabbiran Bibi vs. The State" (2018 P Cr. L J 788)** and **"Syed Hassan Ali Shah vs. The State" (2019 P Cr. L J Note 159)**. It has been held in case reported as **"Zaigham Ashraf vs. The State" (2016 SCMR 2018)** that *"for getting the relief of bail accused only had to show that the evidence/material collected by the prosecution and/or the defence plea taken by*

him created reasonable doubt/suspicion in the prosecution case then he was entitled to avail the benefits of it". The guidance has also been taken from august Supreme Court of Pakistan in the case of **"Manzoor and 4 others vs. the State" (PLD 1972 SC 81)**, whereby, their lordships has observed that:-

*"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."*

9. The petitioner has been arrested on 29.10.2019, (although challenged by the learned counsel for the petitioner that he has been arrested prior to that date), and the investigation in the case is complete and Petitioner is no more required for further investigation who is behind the bars since his arrest and there is no likelihood of tampering with the evidence by the accused. Further there is no apprehension of the petitioner/accused for abscondence. Though the petitioner has the history of involvement in the criminal cases, however, he has not been convicted in any offence so far and it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as **Muhammad Roshan Vs. The State (2016 MLD 392)** and **Muhammad Sarwar Vs. The State and others (2016 YLR Note 110)**. Thus the petitioner in my view is entitled for concession of bail. Guidance in this regard has been sought from the following principles laid down by the Hon'ble Supreme Court in the case of **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)**:-

*"The bail will be declined only in extra ordinary and exceptional cases, for example-*

- (a) *Where there is likelihood of abscondence of the accused;*
- (b) *Where there is apprehension of the accused tampering with the prosecution evidence;*
- (c) *Where there is danger of the offence being repeated if the accused is released on bail; and*
- (d) *Where the accused is a previous convict.*

10. Thus, in view of the above stated reasons, this petition is allowed and petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (Rupees One Lac) with one surety in the like amount to the satisfaction of learned Trial Court

11. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*Adnan/\**