

Form No.HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 01-B of 2010

Muhammad Wasim Kiani
Versus
The State etc

S.No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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3. 17-01-2011. Syed Iftikhar Hussain Gillani, learned counsel for the petitioner.
Sardar Asmat Ullah Khan, learned counsel for the complainant.
Raja Muhammad Yasin, learned Standing Counsel.
Mr. Muhammad Ahmad SI with record.

Arguments heard. To come up on 18-01-2011 for orders.

(RIAZ AHMED KHAN)
JUDGE

Asad K/*

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	18-01-2011	Syed Iftikhar Hussain Gillani, learned counsel for the petitioner. Sardar Asmat Ullah Khan, learned counsel for the complainant. Raja Muhammad Yasin, learned Standing Counsel. Mr. Muhammad Ahmad SI with record.

Muhammad Waseem Kiani petitioner herein seeks post arrest bail in case FIR No.239 dated 15-05-2010, charge U/S 342, 448, 365, 406, 506, 452, 147, 148 PPC Police Station, Sabzimandi, Islamabad.

2. Facts constituting the background of the present case are that one Malik Muhammad Niaz had a civil dispute with another person namely Malik Muhammad Din regarding plot situated in Islamabad. In respect of the said plot suit for Specific Performance of the Contract was pending in the Civil Court. Allegedly, Malik Muhammad Niaz had paid Rs.50,00,000/- (Rupees fifty lacs) and obtained the possession of the plot; whereas Rs.76,00,000/- (Rupees seventy-six lacs) were outstanding. Malik Muhammad Din, the seller of the plot afterwards refused to complete the sale transaction and as a result of that Civil Suit was filed.

3. On 09-04-2010 at 04:00 a.m. allegedly 40 police employees including the commandos,

alongwith brother of Malik Muhammad Din, sons and his personal servants being led by Dr. Imran Munir entered the above said plot. It is important to note that Dr. Imran Munir himself was involved in some other cases and was in protective custody. Being indisposed was admitted in PIMS hospital under the orders of the Hon'ble Supreme Court of Pakistan and police personals were deputed for his protection. Dr. Imran Munir alongwith afore mentioned people after entering the said plot, intimidated, threatened and started beating the servants of Malik Muhammad Niaz. He forcibly took weapons, two trucks, one double cabin vehicle and car from them. Seven servants of Malik Muhammad Niaz were taken to Police Station, Sabzimandi, Islamabad, where Dr. Imran Munir posed himself as Major I.S.I and the servants of Malik Muhammad Niaz were given in the custody of police. On the next day, Malik Muhammad Niaz approached the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi with a habeas corpus petition. The Hon'ble High Court appointed a bailiff, who came to the Police Station, Sabzimandi, Islamabad and recovered seven servants of Malik Muhammad Niaz, weapons and the vehicles. The bailiff submitted his report dated 09-04-2010, however on the same date after the recovery by the bailiff, case FIR No.175 was registered by Mr. Abdul Rehman, SHO, Police Station Sabzimandi, Islamabad; wherein Dr. Imran Munir alongwith four police constables and six civilians were charged and it was alleged that these people had brought the

persons alongwith weapons and vehicles, who were afterwards recovered by the bailiff.

4. The Hon'ble High Court on receiving the report of bailiff set the detenues at liberty and ordered District & Session Judge, Islamabad to depute judicial officer to conduct an inquiry. Accordingly, the Addl: District & Sessions Judge, Islamabad, conducted the inquiry and prepared report dated 05-05-2010. According to the report, seven persons were detained in the police station without any reason; no case was ever registered against them. The Inquiry Officer had come to the conclusion that Dr. Imran Munir at the instance of Malik Muhammad Din had taken forcible possession of the plot with the help of his companions and police constables.

5. On receiving the inquiry report, the Hon'ble High Court ordered registration of criminal case against the culprits mentioned in the inquiry report submitted by the learned Addl: Sessions Judge, Islamabad. Accordingly, case FIR No.239 dated 15-05-2010 was registered; wherein the petitioner is seeking bail. The petitioner was earlier refused bail by the learned Addl: Sessions Judge, Islamabad vide order dated 13-11-2010.

6. I have heard learned counsel for the parties and have perused the record.

7. Learned counsel for the petitioner contended that at the time of alleged occurrence the petitioner was not on duty and therefore there could be no question of petitioner's involvement in the case. He further contended that the case of the petitioner does

not fall within the prohibitory clause of Section 497 Cr.P.C and that the case of the petitioner is one of further inquiry.

8. On the other hand, learned counsel for the complainant assisted by learned Standing Counsel contended that the accused/petitioner has been charged in the FIR by name; deeper appreciation of evidence at this stage is not possible. Learned counsel for the complainant further contended that the fact that the case does not fall within the prohibitory clause would not entitle the accused/petitioner to the concession of bail. He relied upon **2002 S C M R 442 and 2007 P Cr. L J 1303.**

9. In the present case, the petitioner has been charged by name in the FIR. It is admitted that the petitioner was on duty with Dr. Imran Munir. It can never be expected of a police official to take law into his hand and act in a manner which would bring bad name not only to the police department, rather to the state. The mere fact that the case does not fall within the prohibitory clause is not a ground for extending the concession of bail to the accused/petitioner.

In the circumstances, this bail petition stands **dismissed.**

**(RIAZ AHMED KHAN)
JUDGE**

Asad K/.

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**2. 10-01-2011. Mr. Ansar Mahmood Kiani Advocate on behalf of learned
counsel for the petitioner.**

Learned counsel seeks adjournment. Adjourned. Date
in office.

(RIAZ AHMED KHAN)
JUDGE

Asad K/*