

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 969-B/ 2020
Muhammad Iqbal
Versus
The State etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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30.09.2020	Petitioner in person with Mr. Basharat Hussain Raja, Advocate, Syed Shahbaz Shah, State Counsel, Syed Ali Imad ul Islam, Advocate for respondent No.2, Mumtaz Habib SI with record.
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Through this petition, petitioner (Muhammad Iqbal) has prayed for pre-arrest bail in F.I.R. No.442 dated 28.07.2020 under Section 380, 457 PPC, registered at Police Station Golra, Islamabad.

2. The allegation against the petitioner is that on 16.06.2020, in-between 10:00 to 12:00 pm, he along with Muhammad Sharif and Mst.Kaneez Bibi committed theft of household articles, from the house of the complainant, detailed in the F.I.R.

3. Learned counsel for the petitioner contends that the very registration of present F.I.R is tainted with *malafide* on the part of complainant as petitioner earlier got registered F.I.R. No.212 on 12.04.2020 regarding missing of his brother Muhammad Bilal against the brothers of present complainant; that the story narrated in the F.I.R is concocted and that actually there is a property dispute, therefore, in presence of malice and malafide on the part of complainant, petitioner is entitled to the concession of pre-arrest bail.

4. On the other hand, learned counsel for the complainant argued that petitioner is specifically nominated in the F.I.R; that recovery is yet to be effected; that the owner of the house from where the articles were stolen has also sworn affidavit wherein she implicated the petitioner; that in absence of any *malafide* or ulterior motive, petitioner cannot be held entitled to the concession of pre-arrest bail. Learned counsel relied upon case law reported as PLD 2016 SC 171.

5. Heard, record examined.

6. Record reveals that prior to registration of instant F.I.R, petitioner (Muhammad Iqbal) lodged F.I.R on 12.04.2020 regarding abduction of his brother Muhammad Bilal. It was alleged in the said F.I.R that his brother might have been abducted by Muhammad Madni and Muhammad Mursaleen, brothers of Mst. Asima, complainant of the instant F.I.R as Bilal and Asima had contracted love marriage. It further divulges from the record that the complainant of the instant F.I.R is maternal niece of Mst. Kaniz, the first wife of Muhammad Bilal, who has since been divorced by Muhammad Bilal, after second marriage with Mst. Asima. These facts, *prima facie*, cast aspersions on the conduct of the complainant and thus possibility of false implication cannot be evaded. It is demonstrated that malafide on the part of the complainant is surfaced on record because F.I.R by the present petitioner is prior in time than the instant F.I.R. This brings the case of the petitioner within the ambit of further inquiry and warrants exercise of extra ordinary concession.

7. In the case of '*Farhat Hussain Shah and another V. The State and others*' (2010 SCMR 1986) it is held that:-

"Mere heinousness of allegations should not stand in the way of grant of pre-arrest bail to accused if he is otherwise qualified to grant of the same. The material brought on record revealing that it was not established beyond reasonable doubt that petitioners are guilty of an offence punishable with death or imprisonment for life, then petitioners, are entitled for grant of bail. It is settled law that provisions of section 498, Cr.P.C. are intended to be used very sparingly in exceptional cases where mala fide is patent or even latent. In the case in hand, mala fide is found on the surface in view of peculiar circumstances of the case. See Jamaluddin's case (1985 SCMR 1949)."

8. The case law relied upon by learned counsel for the complainant does not extend any help to the complainant due to having distinct facts and circumstances.

9. In view of above, instant criminal misc. petition is allowed, petitioner (Muhammad Iqbal) is admitted to pre-arrest bail subject to furnishing of fresh bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousands) with one surety in the like amount to the satisfaction of learned Trial Court.

10. Needless to mention that above is only tentative assessment, for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran