

Form No: HCJD/C-121
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No.1232-B of 2021

Muhammad Noman Khan

Versus

The State and another.

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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04.

06.12.2021

Ch. Azmat Ali, Advocate for the petitioner.
Mr. Muhammad Sohail Khurshid, learned State Counsel.
Syed Azhar Hussain Shah, learned State Counsel.
Nowsherwan, S.P. Saddar Zone, Islamabad.
Hussain Tahir, A.S.P. Ramna Circle, Islamabad.
Sajid Cheema, D.S.P. (Legal) / Inspector.
Akhtar Zaman, S.I. / S.H.O., Police Station Ramna, Islamabad.
Mian Shahbaz Ahmad, Inspector / I.O. Police Station Ramna, Islamabad.
Banaras, S.I., Prosecution Branch, I.H.C.
Adnan Husnain, A.S.I. / I.O., Police Station Shalimar, Islamabad and
Athar Hussain, A.S.I. / I.O., Police Station Shahzad Town, Islamabad.

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 389/21, dated 01.06.2021, offence under Section 406 P.P.C. registered at Police Station Ramna, Islamabad.

02. It is alleged that the petitioner /

accused took a car from the complainant for two days but did not return the same to him, hence the instant F.I.R.

03. Learned counsel for the petitioner, *inter-alia*, contends that the petitioner / accused is innocent and has been implicated in this case with malafide intentions and by ulterior motives; he is behind the bars and is no more required by police for further investigation; he has got no concern with the alleged offence and no direct or indirect evidence is available against him; investigation in the case has been completed; offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; the co-accused namely Muhammad Saboor Khan nominated in the F.I.R. has already been granted bail before arrest by the Court of learned Additional District & Sessions Judge-VII, Islamabad-West vide order dated 14.07.2021, hence the petitioner / accused is entitled for grant of post arrest bail.

04. Conversely, learned State Counsel opposed the instant bail petition and argued that the petitioner / accused has committed a heinous crime and sufficient evidence is available on record which connects him with the commission of alleged offence; he is also involved in other cases of similar nature, hence he is not entitled for grant of bail after arrest.

05. I have considered the arguments advanced by learned counsel for the petitioner / accused, learned State Counsel and perused the record with their able assistance.

06. As per prosecution story, the complainant has handed over a car to the accused / petitioner but no evidence has been produced in this regard, complainant is not the owner of car, rather in the record of Excise and Taxation Office Faisalabad, car bearing Registration No.FSP-5834 stands registered in the name of one Muhammad

Matiullah s/o Muhammad Younis who has not been produced as a witness by the complainant; no recovery has been effected from the petitioner during the period of physical remand of eight days.

07. Investigating Officer, present in the Court, states that there is no evidence against the petitioner except statement of the complainant. Accused / petitioner himself has made confession before the police that he has committed the instant crime, other than statements of the accused and complainant, there is no independent evidence available on record.

08. As far as contention of learned State Counsel, that the petitioner is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within the meaning of further inquiry. Needful to add that liberty of a person is a

precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in the name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned State Counsel has not brought on record any material that the petitioner / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the cases titled as **"Moundar and others V. The State" (PLD 1990 SC 934), "Babar Hussain V. State" (2020 SCMR 871), "Muhammad Rafique V. State" (1997 SCMR 412) "Muhammad AbidFarooq V. The State and another" (2015 P Cr. LJ 224) and "Jamal-ud-din alias Zubair Khan V. The State" (2012**

SCMR 573).

09. As far as argument of learned State Counsel that the accused has made confession before police is concerned, under Article 38 of Qanun-e-Shahadat Order (10 of 1984), *No confession made to a police officer shall be proved as against a person accused of any offence*, reliance is placed on a case reported as **"Abdul Qadir Motiwala Vs. State" 2000PCr.LJ 1734(DB)**, wherein it is held that:

"Confession made before a person in authority and confession made against co-accused, was inadmissible and such a confession was hit by Article 38 of Qanun-e-Shahadat, 1984. Reliance is also placed on a case reported as "Muhammad Aqeel alias Tapla Vs. The State" 2014 MLD 316(DB).

10. Offence leveled in the F.I.R. do not fall under the prohibitory clause of Section 497 Cr.P.C. In this regard law has been laid down by the Hon'ble Supreme

Court of Pakistan in a case titled as **"Tariq Bashir and others VS. The State" (PLD 1995 Supreme Court 34)**, wherein, it is held as follows:

"In non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment for life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example:-

- (a) where there is likelihood of abscondance 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”.

The same principle has been laid down by Hon'ble Supreme Court in a case reported as **“PLD 2017 Supreme Court 733 titled as Muhammad Tanveer VS. The State and another”**, wherein it is held that:

“Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts”.

It has further been held that:

“We are shocked and disturbed to observe that in cases of this

nature, not falling within the prohibition contained in Section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions.” (Emphasis added).

The same principle has been laid down by the Hon’ble Supreme Court in cases reported as **2011 SCMR 1708, 2016 SCMR 1439, 2020 SCMR 1258 and 2020 SCMR 717,** wherein it is held that:

“where a case fell within non-prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably considered and should only denied in the exceptional circumstances”.

11. It is held by the Hon’ble Supreme Court in cases reported as “**2011 SCMR 1708”, “2016 SCMR 1439”,**

"2020 SCMR 1258" and "2020 SCMR

717", that:

"where a case fell within non-prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably considered and should only denied in the exceptional circumstances".

12. Investigation in the case has been completed. The petitioner / accused is previously non-convict. He is no more required by the police for the purpose of further investigation. He is behind the bars since last more than five months without any progress in the trial. Fair and speedy trial is one of the fundamental rights of the petitioner; no moral and legal compulsion exists to keep him behind the bars for an indefinite period which amounts to punishment without trial.

13. A tentative assessment of record shows that present petitioner has made out a case of further inquiry as envisaged under

Section 497(2) Cr.P.C.

14. In view of above, the petition is **accepted** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 100,000/- (One Hundred Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

15. Instant petition for bail after arrest was fixed for arguments on Friday i.e. 03.12.2021, but Investigating Officer has not produced record of the case before the Court, so the case was adjourned for today. As the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. and as per statement of the Investigating Officer, no evidence is available against the petitioner, so he has been granted bail after arrest today. If the Investigating Officer would have produced the record, the petitioner would have been granted bail on 03.12.2021. The petitioner has been

incarcerated in Adayala Jail, Rawalpindi for two days only due to the failure of non-production of record by the Investigating Officer, this attitude of Islamabad Police cannot be tolerated, the people who are entitled for grant of bail after arrest cannot be allowed to remain in jail for indefinite period due to the non-production of record by the police.

16. In compliance of order dated 03.12.2021, passed by this Court S.P. Saddar Circle, Islamabad, S.D.P.O. Ramna Circle, Islamabad, S.H.O., Police Station Ramna, Islamabad and Banaras, S.I. Prosecution Branch have appeared in person.

17. It is informed that order of fixation of the bail after arrest on 03.12.2021 was communicated to the Police Station Ramna, Islamabad well in time. S.P. Saddar Zone, Islamabad is directed to conduct an inquiry and fix the responsibility of non-

production of the record. Though there is no compensation for the incarceration of two days in prison but the concerned S.D.P.O and S.H.O. are directed to pay Rs.50,000/- (Rs.25,000/- each) as a token of compensation / fine to the accused / petitioner when he is released from the jail and compliance / inquiry report be furnished to Additional Registrar (Judicial) within a period of ten days for perusal of this Court, so that further course of action be decided against the responsible officers.

18. A copy of this order be sent to the Inspector General of Police, Islamabad with the direction to issue necessary instructions, in future if the record is not produced before this Court, strict action against the concerned Investigating Officers and their supervisory officers will be taken which may also entail Contempt of Court proceedings.

19. Needless to mention that, this is

a tentative assessment which shall not affect
the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Approved For Reporting.

Zaheer Janiua

FOR READ ONLY (UNCERTIFIED COPY)