

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 861-B of 2020.

Muhammad Saleem.

VERSUS

Umer Farooq, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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29.07.2020. Ch. Naveed Shahzad, Advocate for the petitioner.
Malik Talha Ahmed, State Counsel.
Mr Mumtaz, SI with police record.

The petitioner Muhammad Saleem son of Bashir Ahmed has sought post arrest bail in case F.I.R. No. 84, dated 14.02.2020, registered under sections 394/337-F(i)/411/109 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Golra Sharif, Islamabad.

2. Brief facts as alleged in the FIR are that on 14.02.2020 three unknown persons entered the house of the complainant pretending to be government officials. It was further alleged that they committed theft and while leaving fired at Mazhar Ali, as a consequence whereof the latter sustained injuries. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is not nominated in the FIR; no specific allegation has been levelled against the petitioner; the petitioner has been involved in the instant case after recording of statement of the co-accused; no incriminating material was recovered from the petitioner despite being on

physical remand; the petitioner is innocent and has no concern whatsoever with the alleged offences; the complainant did not know the role of the present petitioner during the alleged occurrence; allegations against the petitioner are false, frivolous and vexatious; story as narrated in the FIR is false and concocted; the petitioner has been falsely involved in the instant case; the petitioner has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner has been incarcerated for more than seven months; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; further incarceration of the petitioner will not serve any useful purpose; the petitioner was not present at the place of occurrence; the petitioner was not arrested from the crime scene; recovery if any is fake and planted; there is no direct or indirect evidence against the petitioner; offences are not attracted against the petitioner; allegation against the petitioner is that of further inquiry; the co-accused of the petitioners namely, Haleema Bibi, Uzma Bibi and Muhammad Ashraf have been enlarged on bail and the case of the petitioner is at par with them, keeping in view the rule of consistency; mere recovery does not constitute an offence under section 394 PPC; hence urges for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Mumtaz SI and they have opposed the grant of bail. It was argued that; the complainant has no previous enmity with the petitioner; recovery has been affected from the petitioner; the petitioner is a hardened and desperate criminal, if he is released on bail, he will repeat the offence; report under section 173 of Cr.P.C. has been submitted before the learned

trial Court and the trial has been commenced; case against the petitioner falls within the ambit of prohibitory clause of section 497 of Cr.P.C.; hence prayed for dismissal of the instant bail petition.

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

6. Perusal of record reveals that no specific role has been attributed to the petitioner. The co-accused of the petitioner in this case have been granted the concession of bail. The Investigating Officer could not persuade this Court that the role of the petitioner is distinguishable. The Investigating Officer stated that the co-accused who had allegedly disclosed the role of the present petitioner has become a fugitive from law. The role of the petitioner in the instant case definitely requires further probe. The report under section 173 Cr.P.C. has been submitted before the learned trial Court. A plain reading of the FIR in the instant case shows that further probe is required whether ingredients of the offences mentioned in the case are fulfilled to the extent of the petitioner. Investigations qua the petitioner have been completed and he is no more required for the purposes thereof. The petitioner has been incarcerated for more than seven months. The co-accused of the petitioner have been enlarged on bail and case of the present petitioner is at par with them and he is also entitled to the same relief, keeping in view the rule of consistency. In the facts and circumstances of the instant case, the continued incarceration of the petitioner is not likely to serve any useful purpose at this stage.

7. 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".

8. In the circumstances as mentioned above, this petition is **allowed** and the petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two hundred thousand 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/**