

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 934-B of 2018

Waheed Aman
Vs
The State, etc.

S. No. of order/ proceedings	Date of proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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08.01.2019.	Malik Saqib Mahmood, Advocate alongwith petitioner. Mr Muhammad Umair Baloch, Advocate for the complainant. Mr Rabi bin Tariq, State Counsel. Mr Haider, ASI with record.
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The petitioner Waheed Aman son of Amanullah Khan has sought pre-arrest bail in case FIR No. 443, dated 19.09.2018, registered under sections 376, 506(ii), 511 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**"), at Police Station Khanna, Islamabad.

2. The facts, in brief, are that the complainant is a tenant of the petitioner. It is alleged that on 07-08-2018, the petitioner had attempted to commit 'zina-bil-jabr' with the complainant. However, because of intervention of the complainant's mother the petitioner was forced to leave but later came with other persons and extended threats while armed with a weapon. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the instant case has been registered against the present petitioner with the connivance of the local police merely to harass and humiliate him; the story as narrated in the FIR is false, frivolous and concocted; the petitioner is innocent and has not committed any offence; the petitioner has no concern whatsoever with the alleged offence; there is a delay of almost one and a half month in lodging the instant FIR; no occurrence as alleged in the FIR had taken place and the petitioner has no nexus with the alleged offence; the delay in registration of the FIR has not been explained; there is no evidence against the petitioner to connect him with the commission of alleged offence except statement of the complainant; the petitioner has joined the investigations; no case is made out under section 376 of PPC whereas, sections 511 and 506(ii) of PPC do not fall within the prohibitory clause of section 497 Cr.P.C; the petitioner is previously non-convict and non-record holder; the case against the petitioner is that of further inquiry. The learned counsel has, therefore, urged confirmation of the pre-arrest bail already granted to the petitioner.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith the Investigating Officer, namely, Haider, ASI. They have opposed the grant of bail. However, the Investigating Officer has stated that as per investigations carried out so far it appears that there was dispute between the parties regarding payment of rent. He

has further stated that the record obtained from the concerned cellular phone indicates that the petitioner at the relevant time may not have been present at the alleged crime scene. Regarding delay in registration of the FIR he has stated that the parties had settled their dispute in the Police Station.

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

6. A plain reading of the FIR shows that the petitioner is alleged to have made an attempt. Admittedly, the complainant is a tenant of the petitioner. In view of the material collected during the course of investigations it cannot be ruled out at this stage that the criminal case may have been registered to settle disputes relating to tenancy. A case for further inquiry is definitely made out.

7. Confirmation of pre-arrest bail is indeed distinguishable from granting post arrest bail. As already noted it cannot be ruled out that the FIR may have been registered so as to humiliate and harass the petitioner. A case is made out for confirmation of bail in the light of the principles laid down by the august Supreme Court in case titled "*Rana Muhammad Arshad versus Muhammad Rafique and another*" [PLD 2009 S.C. 427]. This Court is, therefore, inclined to confirm pre-arrest bail already granted to the petitioner.

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8. 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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

9. In the circumstances, as mentioned above, this petition is **allowed** and the pre-arrest bail already granted to the petitioner is confirmed, subject to furnishing fresh bail bonds in the sum of Rs.50,000/- (Rupees fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court. The petitioner shall be at liberty to deposit cash surety which shall be accepted in the light of the policy the learned trial Court.

Needless to mention that this is a tentative assessment, which shall not affect the trial of this case in any manner.

(CHIEF JUSTICE)

Luqman Khan/*