

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

Crl. Misc. No.729/B/2020

Muhammad Shafique

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.
(04)	01.06.2020	Mr. Mazhar Akram Awan and Mirza Irfan Ghazanfar, Advocates for the petitioner. Ch. Zubair Mehmood Gujjar, Advocate for respondent No.2. Mr. Hasnain Haider Thaheem, State Counsel. Gulfraz, S.H.O and Muhammad Azeem, ASI, P.S Khanna.

MOHSIN AKHTAR KAYANI J. Through the instant petition, the petitioner has prayed for his post arrest bail in case FIR No. 54/2020, dated 03.02.2020, U/S 448, 380, 452, 411, 506(ii)/34 PPC, P.S Khana, Islamabad.

2. Brief facts referred in the instant FIR lodged on the complaint of Syeda Yasmeen Asad/respondent No.2 are that she is lawful owner of House No. 6, Madina Town, Khanna Dak, Islamabad; that due to her family issues, she has to go to Peshawar for one month, when she came back to her house, she tried to open the lock of the main gate, but same were changed and house did not open, and in the meanwhile Younis, Maju and six (06) unknown persons armed with pistols came on the spot and extended life threats to her and told her that house has been taken over by them.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in the instant case; that no recovery has been effected from the petitioner; that challan has been submitted in the Court; that petitioner has not been nominated in the instant F.I.R.

4. Conversely, learned counsel for the respondent No.2 as well as State Counsel contend that petitioner is habitual offender, who is involved in number of cases of similar nature and is a Member of *Qabza Mafia* gang; that the eye-witness Waheed has specifically ascribed the role of present petitioner in the alleged incident, even petitioner has been nominated through supplementary statement with the specific role by the complainant herself.

5. Arguments heard and record perused.

6. Perusal of record reveals that the petitioner has been involved in the abovementioned case through supplementary statement on the next day of alleged incident for trespassing and criminal intimidation. The complainant is not eye-witness of any theft or trespassing, rather she alleged that her house was illegally taken over by Younas, Maju and six (06) unknown persons. However, at this stage the Investigation Officer has confirmed that the house has already been taken over by the complainant and accused persons are not in possession of the subject property.

7. Tentative assessment of record reflects that present petitioner is not nominated in the instant F.I.R, even no recovery has been effected from him.

Investigation Officer has already submitted the challan in the Court on 26.03.2020 and petitioner is behind the bars since 17.03.2020. As such the offence with which the petitioner has been charged does not fall within the prohibitory clause of Section 497 Cr.P.C, even otherwise, while considering the role of the petitioner, ground of further inquiry is visible from the record in favour of present petitioner. In such like cases, the grant of bail is a rule and refusal is an exception. Reliance is placed upon **PLD 1995 SC 34 (Tariq Bashir and 5 others Vs. The State), PLD 2017 SC 733 (Muhammad Tanveer Vs. The State and another).**

8. For what has been discussed above, the instant petition is **allowed** and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

(MOHSIN AKHTAR KAKANI)
JUDGE

RAMZAN