

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.Misc.BA No.111-P/2016

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

ORDER

ASSADULLAH KHAN CHAMMKANI, J.- Petitioner

Shams ur Rehman alias Khan, seeks bail in case FIR No.670 dated 17.08.2010, registered under section 17 (3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979, and S.411 PPC, in Police Station Gulbahar.

2. Complainant Sheraz Inayat present in person stated at the bar that he does not want to engage a counsel and would rely on the arguments of learned AAG for the State. He also requested for cancellation of non-bailable warrant of arrest issued against him on the previous date. Since the warrant has not yet been executed, therefore, the same stands cancelled.

3. Arguments of learned counsel for the petitioner and learned AAG for the State heard and record perused.

4. According to report of complainant on the fateful day he alongwith inmates of his house was present in their house when at 1140 hours, somebody rang the bell of his house; that when his younger sister opened the door, a woman accompanied by five persons duly armed with firearms entered their house and forcibly took away gold and cash amount alongwith CNIC; that he can identify the culprits if brought before him. Initially, lady accused Mst. Humaira Shafiq was arrested, who disclosed the names of other co-accused in her statement. Later on, complainant and one Khalid Jeweler in their statements under section 164 Cr.P.C besides charging other co-accused, also charged the petitioner.

5. Admittedly, petitioner is not named in the FIR. The source qua his complicity in the commission of offence has not been disclosed by the complainant in his statement under section 164 Cr.P.C. Neither any recovery of the alleged snatched gold and cash amount has been effected from direct or indirect possession of the petitioner nor has he confessed his guilt before the competent Court of law. Similarly, no identification parade of the petitioner has been conducted. Thus, in the above circumstances, connectivity of the petitioner in the commission of offence requires further probe into his guilt. The only ground

which prevailed before the learned Trial Court for refusal of bail to the petitioner, was his abscondence, but it has been settled by the august Apex Court in case titled, **“Qamar alias Mitho Vs The State and others” (PLD 2012 Supreme Court 222)** that right of bail cannot not be refused to accused merely on account of his alleged abscondance which is a factor relevant only to propriety. No doubt, trial of the petitioner is in progress and as a practice usually the Courts in such like circumstances avoid disposal of the bail matter on merits with a view that the case of any party may not be prejudice, but this principle is not of a universal application. It has been held by the august Apex Court in case titled, **“Abid Ali alias Ali vs the State” (2011 SCMR 161)**, that when prima face case of accused appears to be one of further inquiry and is covered under the provisions of section 497 Cr.P.C. then it becomes right of accused that he be released on bail. Practice of refusal of bail in cases where challan has been submitted or trial is in progress should not be a bar to refuse a right as bail cannot be withheld as a punishment. It appears from the record that supplementary challan has been submitted against the petitioner on 01.08.2015 and he has been charge sheeted on 14.10.2015. Since 14.10.2015 till 27.01.2016, when record of the case was requisitioned

by this Court in connection with the instant bail petition, not a single prosecution witness has been examined despite hectic efforts of the learned Trial Court. As manifest from the order sheets of the learned Trial Court despite process even the complainant is not appearing before the learned Trial Court for his evidence. It may be noted that in this Court too, presence of the complainant was procured on the basis of non-bailable warrant of arrest. Thus, in such circumstances, refusal of bail to the petitioner, who otherwise is entitled to its concession as a right, would not be a step justified in law.

6. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced
08.02.2016

J U D G E