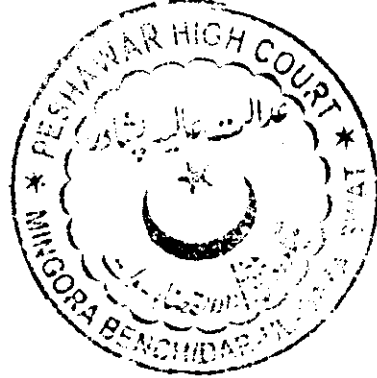


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**BEFORE THE PESHAWAR HIGH COURT DAR UL  
QAZA SWAT, MINGORA**

B.A. Petition No. 368.m /2017



Muhammad Bilal son of Muhamamd Shafiq R/o Dilbodi Ogai  
Mansehra .....Accused/ petitioner

**VERSUS**

1. The State.
2. Muhammad Rahman son of Aziz ur Rehman R/o Qambar  
Mohallah Golden Tehsil & District Swat.  
..... (Respondents)

Case F.I.R. No. 237 U/S-392/419/171-ppc	Dated 05/12/2016 "Skha Kot"
--	--------------------------------

**Subject:-** Application U/S-497-Cr.PC for the grant of post  
arrest bail to the accused/petitioner till the final  
decision of the case.

**RESPECTFULLY SHEWETH**

- 1) That the accused / petitioner has been arrested by the local  
police in the above cited case and is now behind the bars  
since his arrest. *(Copy of FIR is hereby attached as Annex:  
"A")*.
- 2) That the accused /petitioner moved an application before the  
court of Additional Session Judge/ Zilla Qazi Malakand for  
his post arrest bail, but the same was declined vide order  
dated 01/08/2017.. *(Copy of the application and order are  
attached as Annex: B )*
- 3) That feeling aggrieved from the impugned order of the  
learned lower court, the accused/ petitioner is humbly

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**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.M B.A. No. 368-M/2017.**

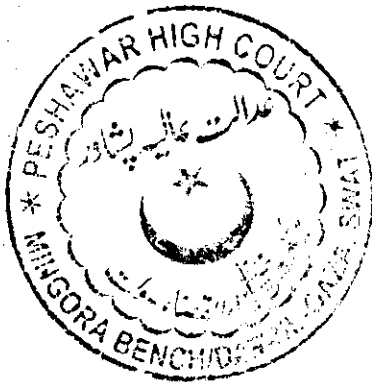
**JUDGMENT**

Date of hearing: **08.09.2017.**

**Petitioner:- (Muhammad Bilal) by Mr.  
Jehanzeb Khalil, Advocate.**

**Respondents:- (the State & 1 another) by  
Barrister Asad Hameed-ur-Rahman, State  
counsel and Mr. Hairat Khan, Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** The learned Additional Sessions Judge/Izafi Zila Qazi Malakand at Dargai mere on involvement of the accused/Petitioner Muhammad Bilal in the statement recorded under section 161/164 Cr.P.C nominated by Mohammad Sohaib son of the complainant and with regard to the evidence leading to believe the Petitioner being habitual offender in offences of similar nature is to be discouraged by refusing him bail. As due to such dishonest acts of an accused, the moral values of the society are at the verge of collapse and the offence being fall under the prohibitory clause of section 497 Cr.P.C., hence the

**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora/Dar-ul-Qaza, Swat.

application bearing No. 40/4 of the year 2017 was dismissed.

2. Herein Muhammad Bilal being implicated in case FIR No. 237 dated 05.12.2016 charged under sections 392,419,171 PPC registered at Police Station Sakhakot, is optimistic for the grant of his post arrest bail.

3. On return from Saudi Arabia by his flight reaching herein at Peshawar International Airport at 1500 hours. Muhammad Rahman accompanied by his son Mohammad Sohaib hired a Taxi driven by Muhammad Zada. They took start on 15.30 hours from Peshawar International Airport for their village. The complainant was sleeping on the front seat inclined back as tired. The driver stopped the motorcar, so he was awoken. All of them witnessed the motorcar bearing No. 8801 having registration number of Punjab. Those who were sitting in the said motorcar gave them signal to halt, the driver came out of his motorcar and was demanded registration

ATTESTED

Examiner

(38)

documents. The driver then given them registration documents of the motorcar alongwith its key. The complainant, his son and friend of son of the complainant by the name of Mohammad Fayaz were also alighted and went nearby. The persons sitting in the motorcar having number from Punjab had worn Excise Department uniform and introduced themselves as Excise Department Officials. Out of these persons, the body search of the complainant was conducted and the luggage belong to Muhammad Fayaz were also checked. Those persons also stated that the registration documents of the motorcar are fake and asked for its documents. The driver told them that he is not in possession of the fake documents. The person who was sitting on the front seat of the said motorcar bearing number from Punjab Province asked the complainant about the currency in the pocket, who was told about possessing Saudi Riyals. The envelope containing one lac Saudi Riyals was handed to him, who started his motorcar and went towards

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Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

(33)

Malakand side. Out of the accused, one sitting on the front seat was having pistol, while the remaining persons sitting on the rear seat were having Kalashnikovs and the driver was empty-handed. If, all the accused are brought before him, he can easily identify them, thus making the report in the like manner.

4. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned State counsel for the State, record with their assistance gone through.

5. As far as implication of the accused/Petitioner in cases bearing FIR No. 512 dated 14.05.2012, FIR No. 1149 dated 05.10.2012, FIR No. 1212 dated 26.11.2013, FIR No. 179 dated 07.06.2015 and FIR No. 1135 dated 09.10.2016 are concerned, he has already been released on bail in all the above-referred cases. At present, learned counsel for the Petitioner states that the Petitioner is not involved in any other case except the present

**ATTESTED**

*the*  
**Examiner**  
Peshawar High Court Bench  
Mingora/Dar-ul-Qaza, Swat.

(33)

one seeking bail. Attested copies of the judgments in the above cases being furnished, which are placed on record. This occurrence has happened on 05.12.2016 later after almost 7 months Muhammad Sohaib, the son of the complainant recorded his statement, who on his own satisfaction has implicated the accused-Petitioner to be an accused who was wearing Excise Department official's uniform and has committed the offence as stated above in the First information Report. The requirement for the identification of the accused-Petitioner to have conducted identification parade, record does not find mention any such identification parade. Out of the one lac Saudi Riyals, the Investigating Officer badly failed to recover even some of the Saudi Riyals and above all the motorcar bearing No. 2801 Punjab has not been recovered. The Petitioner is stated to be a student of University, who might have previous history of his involvement, but having no evidence for his conviction he has been erstwhile enlarged on bail. There seems to be implication of the

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Examiner  
Peshawar High Court Bench  
Mingora-Dar-ul-Qaza, Swat.

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accused/Petitioner on account of his previous involvement and he has been named by the son of the complainant seems to be at the behest of the police.

6. It has been held in 2005 YLR 1693 (Lahore) " Muhammad Shafi vs the State".

The relevant citation is reproduced as under:-

*"Involvement of accused in number of criminal cases was not sufficient to deprive him of his right of liberty in the absence of his conviction therein by a competent Court. Recovery of stolen property, prima facie, amounted to a civil transaction between the parties which was to be proved through evidence yet to be produced before the Trial Court. Accused was no more required for investigation. Trial of accused was not in progress. Case of accused required further inquiry as contemplated by S. 497 (2), Cr.P.C. Offence allegedly committed by accused did not fall within the ambit of prohibitory clause of S. 497 (1) Cr.P.C. Accused was admitted to bail in circumstances.*

8-12/

In support of non-recovery referred

to 2006 YLR 3088 (Karachi) "Manu alias

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Peshawar High Court Bench  
Mingora/Dar-ul-Qaza Swat.



*Manthar and 3 others vs the State*", wherein it has been held as:-

*"Nothing had been recovered from the possession of three out of four accused persons which showed that only vague allegations were made against said accused persons for participation, in the commission of crime. Alleged looted cash and bundle of cigarettes were not recovered from possession of said three accused persons. Said accused were released on bail in circumstances."*

Whereas with regard to non-identification test *2005 P Cr.LJ 531 (Lahore)* *"Muhammad Kazim vs the State"* has been referred. The relevant citation speaks of:-

*"Accused was not named in FIR and he had not been put to any identification test. Question of involvement of accused in the case needing serious consideration, case was covered under subsection (2) of S.497 Cr.P.C calling for further inquiry into the guilt of accused. Disk in question was recovered from the accused after more than one and half months of alleged occurrence. Case against accused attracted offence under S. 411 PPC which was not covered under prohibitory clause of S."*

  
**ATTESTED**

**Examiner**

Peshawar High Court Bench  
Mingora/Dar-ul-Qaza, Swat.



497 (1), Cr.P.C. Accused was stated to be previous non-convict. Accused was granted bail, in circumstances.

Whereas there is delay in lodging of the FIR or statement under section 161 Cr.P.C, such delayed statement could not substitute an FIR. Ref. 2010 YLR 1377 (Peshawar) "Ibrahim Khan and another vs the State and another".

7. In view of the scenario, the Petitioner is entitled to the concession of bail. Hence, he is asked to furnish bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

These are the reasons of my short order of even date.

Announced  
Dt: 08.09.2017.

  
JUDGE

Certified to be true copy

EXAMINED

Peshawar High Court, Mingora Bench, Co-23 S.W.  
Authorized Under Article 20 of the Constitution of Pakistan

Nawab

Office  
13/09/2017  
W/R