

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB No. 356-D of 2015

JUDGMENT

Date of hearing 06.11.2015

Appellant-petitioner Abdul Waheed by Malik Hidayat Ullah

Malana advocate

Respondent State and others by Mr. Kamran Hayat Khan

Miankhel Add: Advocate General for State and Mr. Muhammad

Ismail Khan Alizai advocate for complainant.

MUHAMMAD GHAZANFAR KHAN, J.- Through the instant petition, the petitioner Abdul Waheed alias Waheedullah has called in question the order dated 28.9.2015 rendered by learned Sessions Judge, Tank whereby the concession of bail granted to him by learned Judicial Magistrate-II, Tank in case FIR No.122 dated 07.7.2015 registered under sections 457/380/411 PPC at police station Mulazai, District Tank, was recalled.

2. The allegations as contained in the FIR lodged by Mst. Walia Bibi complainant on 07.7.2015 are that her husband Rehmat Shah is abroad from the last about four months and on the night of occurrence, she alongwith children and mother were asleep in the courtyard of her house when at about 02 AM, three persons duly armed with Kalashnikovs entered the house and awakened her. They demanded keys of the rooms and boxes which, due to

fear, were handed over to them. They committed theft of cash amount of Rs.1,50,000/-, gold ornaments weighing five tolas, sugar check machine, D.V.D and two Nokia mobiles, hence the report.

3. The learned counsel for petitioner contended that the petitioner is not directly charged in the FIR; that there is delay in lodging he FIR which points towards consultations and deliberations and that the petitioner was rightly released on bail by the learned Judicial Magistrate giving sound reasons, but the learned Sessions Judge, Tank erred in recalling the bail, as grounds for grant of bail and cancellation thereof are quite different.

4. On the contrary, learned counsel for the complainant vehemently opposed the arguments of learned counsel for the petitioner and contended that though the petitioner has not been charged directly in the FIR, but he has been charged in the statement of complainant recorded under section 164 Cr.P.C. He further contended that recovery of cash amount has been effected from physical possession of the petitioner and that the offences with which the petitioner is charged do fall within the prohibitory clause of section 497 Cr.P.C, thus his bail has rightly been cancelled by the learned Sessions Judge.

5. I have heard arguments of learned counsel for the parties and have gone through the record.

6. Perusal of the record reveals that in the instant case, the occurrence is alleged to have taken place on 07.7.2015 at 02 AM whereas the report has been lodged on the same date at 09 AM i.e. with a delay of seven hours. Admittedly no-one has been charged by name in the report lodged by complainant. The accused/petitioner has been charged for the first time on 09.7.2015 by the complainant in her statement under section 164 Cr.P.C recorded by learned Judicial Magistrate, wherein too, she has not disclosed the source of her satisfaction. The only point against the petitioner is recovery of cash amount of Rs.41,030/- from his possession. It is yet to be seen at the trial that whether the amount allegedly recovered from possession of the petitioner is stolen amount or otherwise. From the available record, the petitioner can be charged with an offence under section 411 PPC, the punishment of which does not fall within the prohibitory clause of section 497 Cr.P.C. Moreover, investigation in the case is complete and the petitioner is no more required by the local police for further investigation. All these factors, on tentative assessment, make the case of petitioner one of further inquiry entitling him for the grant of bail.

7. For the reasons mentioned above, the instant petition is allowed and the petitioner is admitted to bail on furnishing bail bonds in the sum of Rs.3,00,000/- (Rupees

three lac) with two sureties, each in the like amount, to the satisfaction of Illaqa/Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

8. These are the detailed reasons for my short order of even date.

Announced.

Dt:06.11.2015.

Habib/*

JUDGE