

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

Cr.MBA.No.347-D/2019 with
Cr.Misc.No.353-D/2019

Imran and another

Versus

The State and another

JUDGMENT

For petitioners: Mr. Inamullah Khan Kundi Advocate.

For State: Mr. Adnan Ali, Asstt: A.G.

For complainant: Mr. Ahsan Bilal Langrah Advocate.

Date of hearing: **02.12.2019.**

S.M. ATTIQUE SHAH, J.- Through this petition the petitioners Imran and Mulazim Hussain have sought bail after arrest in case FIR No.567 dated 02.9.2019 under Sections 458/382/411 PPC read Section 15 AA registered at Police Station SMA, District Tank.

2. The brief facts of the case, as set forth in the crime report, are that on 02.9.2019 at 0800 hours, complainant Fazal-ur-Rahman reported to the local police that on the eventful night, five accused, one armed with Kalshnikov, two having pistols and two empty handed, entered his house, awakened him and took away Rs.5,00,000/- from the pocket of his wearing banyan and Rs.3,00,000/- from his wife Mst. Salma Bibi. The

complainant reported that he can identify the accused if brought before him.

3. After their arrest, the petitioners applied for their release on bail but their bail petition was dismissed by learned Sessions Judge, Tank vide order dated 12.11.2019, hence, this petition for the same relief.

4. Arguments heard and record perused.

5. The petitioners have been involved in this case through statements got recorded by the complainant under Section 164 Cr.PC on 29.10.2019 and 04.11.2019 i.e. after two months of the occurrence wherein no source of satisfaction has been mentioned by the complainant and stated that the accused Sikandar alias Qalandar, Mulazim Hussain alias Pawanda (petitioner) and Surat Khan were arrested in district Bhakkar in another case and during investigation in that case admitted the commission of the instant offence. Law is quite settled on the point that the statement without source has got no value in the eye of law. Reliance placed on "*Naeem Akhtar v. The State*" 1996 SCMR 511 and "*Abid Ali alias Ali v. The State*" 2011 SCMR 161. Moreover, in the FIR the complainant stated that five accused entered the house and committed the offence while in his statements under Section 164 Cr.PC he charged six accused.

6. No test-identification parade has been held in this case so as to positively involve the petitioners with the commission of alleged offence despite the fact that the

complainant mentioned in the FIR that he can identify the accused if brought before him. In cases where the names of culprits are not mentioned, holding of test-identification parade becomes mandatory. Reliance placed on 1997 SCMR 971, 2010 YLR 126, 2005 YLR 565, 2004 PCr.LJ 1659 and 2000 YLR 80.

7. Although recovery of Rs.1,00,000/- each has been shown effected from the petitioners yet the fact remains that authenticity of such recovery will be considered by the learned trial Court after recording evidence in this case. Heinousness of an offence is no ground to refuse bail to an accused who otherwise becomes entitled for the concession of bail. There is no previous record of the petitioners being convicted in such like cases. Investigation of this case qua the petitioners is complete and they are no more required for the purpose of further investigation, therefore, their continuous incarceration in jail would not serve any beneficial purpose at this stage.

8. In view of the above, the case against the petitioners calls for further inquiry into their guilt within the purview of subsection (2) of Section 497, Cr.P.C. This petition is, therefore, allowed and the petitioners are admitted to bail on furnishing bail bonds in the sum of Rs.200,000/- (Rupees two hundred thousand) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

9. Needless to say that any observation made in this order being tentative in nature should in no way prejudice the proceedings before the learned trial Court.

10. Above are the detailed reasons for my short order of even date.

Announced.
Dt:02.12.2019.
Imran/*

JUDGE

(S.B)
Hon'ble Mr. Justice S.M. Attique Shah

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