Form No: HCJD/C-121.

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

Criminal Misc. No. 335-B of 2022

Muhammad Hamza

Versus

The State & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.04.2022	Mr. Abdul Rab Awan, Advocate for petitioner. Mr. Hammad Saeed Dar, State Counsel. Mr. Jafer Ali, ASI P.S Karachi Company, Islamabad.

The petitioner has sought post arrest bail in FIR No. 415 dated 13.08.2021, pursuant to which the petitioner is charged with an offence under Sections 392 and 411 of Pakistan Penal Code, 1860 **("PPC")**, registered at Police Station Karachi Company, Islamabad.

2. Learned counsel for the petitioner submitted that the FIR was registered after a delay of four days and there was no explanation for such delay. He submitted that the content of FIR reflected that while the complainant had alleged that a motorbike and mobile had been snatched from him, he had not mentioned EMEI number of the mobile

and instead only mentioned SIM number in the FIR. Further that the complainant had not mentioned the registration number of the motorbike on which accused approached the complaint for purposes of the robbery. He submitted that the FIR also did not record any description of the accused persons. That the petitioner has been arrested in another FIR after which he was falsely implicated in the instant case.

3. Conversely the learned State Counsel submitted that the petitioner had been positively identified in an identification parade carried out on 05.10.2021. That cell phone that he allegedly snatched from the complainant has been recovered from his possession and the motorbike referred to in the FIR has also been recovered from a co-accused of the petitioner. He submitted that the forensic report of the bike that was snatched reflected that its engine and chassis number has been tampered with and for such offence one Fiaz had been implicated who has been released on bail. He however stated that the role of co-accused Fiaz was completely different and limited to tampering of chassis number and he was not accused of an offence under section 392 of PPC.

4. The record reflects that the petitioner was positively identified by the complainant. There is nothing on the record to establish that the manner in which the identification parade was carried out suffers from infirmity. Further during the investigation, the cell phone snatched from the complainant has been recovered from the possession of the petitioner. In view of the positive identification parade and the recovery affected from the petitioner of one of the robbed items there is sufficient material available on record connecting the petitioner to the offence on the basis of tentative assessment of the record. The punishment prescribed for an offence under Section 392 of PPC is a term up to ten years imprisonment, which falls within the prohibitory clause of Section 497 of Cr.P.C. and the learned counsel for the petitioner has failed to establish that the case of the petitioner falls within the ambit of further inquiry.

5. The argument of the learned counsel for the petitioner that a co-accused has been granted bail and the principle of consistency is applicable is without force as the co-accused who has been granted bail was not

accused of an offence under section 392 of PPC. In view of the above there is sufficient material on record to establish for purposes of section 497 of Cr.P.C that the petitioner is connected to the offence that he has been charged with. The instant petition is without merit and is therefore **dismissed.**

6. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

(BABAR SATTAR)
JUDGE

Shakeel Afzal