ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.803-B /2019

Shazia Younas Vs the State etc

Serial No. of order/ proceeding.	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
06	20.01.2020	Mr. Muhammad Ilyas Khan, Advocate for petitioner. Mr. Zohaib Hassan Gondal, State counsel with Zubair ASI, P.S Shalimar, Islamabad.

GHULAM AZAM QAMBRANI, J

The petitioner [Shazia Younas] seeks post arrest bail in case FIR No. 216/2015, dated 13.7.2015, under sections 419/420/34 PPC, registered at Police Station Shalimar, , Islamabad.

2. Brief facts of the prosecution case are that complainant namely Muhammad Aslam lodged FIR No. 216/2019 with the Police Station Shalimar, District Islamabad, with the averments that he is running a business in the name & style of "Rehman Jewellers" at F-10-Markaz, Islamabad. On 13.7.2015 at about 6.00 PM, two women came to his shop, selected and purchased some ornaments valuing Rs 5,40,000/- and for the payment of the same gave three debit cards, out of which only one could be charged for an amount of Rs 50,000/-. Thereafter, the lady accused/petitioner handed over a visiting card of one Shah Mehboob Alam stating that he is Federal Ombudsman. Further assured that after "Iftari Time" she will pay the remaining amount of purchased ornaments, but no payment has been made. On this report , FIR was registered and investigation was carried out. During the course of investigation petitioner was arrested on 24.10.2016.

3. Learned counsel for the petitioner contended that she applied for post arrest bail and the learned Court of Judicial Magistrate, Islamabad-West granted

bail in her favour vide order dated 8.11.2016. After release on bail, she was involved by the police in many other cases and the learned Court of Judicial Magistrate was not informed about her arrest, and ultimately she was declared proclaimed offender and the bail already granted by the Court vide order dated 8.1.2016 was re-called. Learned counsel placed on record certified copies of the Judgments passed in case FIR No.180/2018, 436/2017, 581/2017, 301/2017, 319/2016 & 12/2018 wherein she has been acquitted from the charges.

4. On the other hand, learned state counsel vehemently opposed the grant of bail to the petitioner contending that certain gold ornaments have been recovered from the petitioner; she was found involved in a number of other cases and has also been declared proclaimed offender. In-spite of the fact that offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, but she has been declared proclaimed offender in this case and on the basis of exceptional circumstances the petitioner is not entitled for concession of bail.

5. After hearing arguments, I have minutely perused the record.

6. Perusal of record reveals that on 23.12.2019, notices were issued to the complainant/respondent No.2 for 30.12.2019. On the said date, complainant put appearance and sought adjournment in order to engage services of a counsel. Accordingly, matter was adjourned to 06.01.2020. On the said date, Ch. Waqas Zameer, Advocate appeared and sought adjournment on the ground of non-availability of his principal counsel. Once again the matter was adjourned. On 17.1.2020, yet another adjournment was sought by the complainant due to non-availability of his learned counsel. Today on 20.01.2020, again when the matter was called, neither the complainant nor his learned counsel bothered to appear before the Court, therefore, this Court felt constrained to decide

the petition after giving audience to parties interested and present before the Court i.e learned counsel for the petitioner and learned State Counsel.

7. The petitioner is not named in the FIR; the complainant has not specifically mentioned the weight, size and made-of i.e gold or silver of all the articles. During the course of investigation, allegedly some ornaments i.e one piece of ring, two pieces of chain were recovered from the petitioner but no test of identification of the alleged articles was held, which fact creates doubt in case of prosecution towards the petitioner and makes the case for further inquiry and probe into the matter. Further more, the petitioner has already been sent to judicial custody. Record further reveals that the petitioner has already been acquitted in all the other cases. The learned Trial Court was not aware of her arrest in other cases due to which she could not appear before the learned Trial Court and was declared proclaimed offender, as such, non-appearance of the petitioner seems to be not intentional. No useful purpose would be served to the prosecution to keep the petitioner behind the bars for an indefinite period. Deeper appreciation of the evidence is neither desirable nor permissible at bail stage. The guilt of accused is yet to be determined by the learned Trial Court after recording of the evidence. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case, albeit his acquittal in the long run. The alleged offence under Section 420 PPC is bailable, while the offence under Section 419 PPC does not fall within the prohibitory clause of Section 497 Cr.PC.

8. In view of the above facts and circumstances, this petition is allowed subject to furnishing surety bonds of Rs 4,00,000/- (Four lacs) with two sureties

in the like amount to the satisfaction of learned Trial Court.

9. The observations made hereinabove are tentative in nature and are strictly confined to the decision of this bail petition only.

(GHULAM AZAM QAMBRANI)
JUDGE

S.Akhtar

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