HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.586-B/2014

Zeeshan Akeel
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.

16-10-2014 Mir Farooq Sulehria, advocate for the petitioner.
Mr Rehmat Ali Khan Rana, advocate for the complainant.
Malik Manzoor Ahmad Awan, Standing Counsel.
Mr Sarwar Naeem, ASI with record.

The petitioner Zeeshan Akeel son of Samuail Masih has sought post arrest bail in case, F.I.R. No.121, dated 05-08-2014, registered under Sections 381-A / 411 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Aabpara, Islamabad.

2. Brief facts as narrated in the FIR are that on a written complaint of Zeeshan son of Muhammad Aslam Khan the FIR has been registered, wherein it is reported that the complainant had parked his motorcycle in the parking of Zong Office, Islamabad, and on his return, he found the motorcycle missing.

3. Learned counsel for the petitioner contends that; the petitioner is innocent and has been falsely implicated in this case; the petitioner has been booked in the instant case malafidely; the petitioner and the main accused are working in the same office and the motorcycle was sold to the petitioner as a bonafide purchaser; the petitioner purchased the said motorcycle from his co-accused without the knowledge that main accused had stolen the said motorcycle; the main accused has also recorded his statement that the petitioner was innocent; the FIR has been registered with a delay of three days; the petitioner has been incarcerated for the last two months and ten days; the investigation of the case has

been completed and he is no more required for further investigation; the petitioner is previously non-convict and there is no other case except the present one; the offences do not fall within the prohibitory clause of Section 497 Cr.P.C. it is stated that at the most offence under Section 411 PPC is attracted to the petitioner, as motorcycle has been recovered from his possession; the CCTV cameras were installed at the location but the petitioner is nowhere in the footage, rather the main accused is seen as taking away the motorcycle; hence he prays for enlarging the petitioner on bail. Reliance is placed on *1988 SCMR 857 and 2003 MLD 1196.*

4. On the other hand, learned Standing Counsel assisted by learned counsel for the complainant opposed the bail and contended that; the recovery of the motorcycle has been effected from the petitioner; petitioner is involved in the commission of offence; the petitioner was arrested on 06-08-2014. The learned Standing Counsel admits that the offences mentioned in the FIR fall in the non-prohibatory clause and prayed for dismissal of the petition. Reliance is placed on *2005 P.Cr.L.J. 994.*

5. After giving careful consideration to the arguments of the learned counsels, finding of this Court are as follows:

6. Admittedly, the offences mentioned in the FIR fall under the non-prohibatory clause of Section 497 Cr.P.C. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of *'Zafar Iqbal Versus Muhammad Anwar and others'* (2009 SCMR 1488), a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though

not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

i) Where there is likelihood of abscondance of the accused;
ii) Where there is apprehension of the accused tampering with the prosecution evidence;
iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
iv) Where the accused is a previous convict.

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of Subhan Khan Versus the State (2002 SCMR 1797) and Tariq Bashir and five other Versus The State (PLD 1995 SC 34). The said principles have been consistently followed. Reliance may also be placed on the case of Riaz Jafar Natiq Versus Muhammad Nadeem Dar and others (2011 SCMR 1708).

8. The petitioner is not nominated in the FIR, which was registered after a delay of three days. The petitioner has been implicated in the instant case after recovery of motorcycle. There is nothing on record to connect the present petitioner with the commission of offence of theft. The petitioner admittedly is not seen in the footage recorded by CCTV cameras installed at the location. The recovery has been effected from the petitioner and it is contended that he had purchased the motorcycle from the main accused without any knowledge that it was stolen. The main accused has also recorded his statement to the effect that the present petitioner is innocent. The question whether the petitioner is involved in the offence under Sections 381-A or 411 of PPC, whether he had knowledge that the motorcycle was stolen, require further probe. The investigation against the petitioner has been completed and he is no more required for further investigation. The petitioner is previously non-convict and nothing has been placed on record for forming an opinion that

he is a habitual offender. He has been incarcerated for the last more than two months; therefore, this Court is of the view that the petitioner is entitled to bail.

9. In the circumstances as mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees two lac) with one surety in the like amount to the satisfaction of learned Trial Court.

Needless to mention that this is tentative assessment, which shall not affect trial of this case in any manner.

(ATHAR MINALLAH)
JUDGE

*Asad K/**

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