Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 470-B of 2014

Afzal Ahmed
Vs
The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03)	***07-8-2014.***	Malik Muhammad Nauman Khan Advocate, for the petitioner. Malik Zahoor Hussain, Standing Counsel. Mr Ishaq SI, with record.

Through instant petition Afzal Ahmed s/o Afaaz Ahmed has sought post arrest bail in case FIR No. 75 dated 12-6-2013, registered under Sections 380 & 411 of the Pakistan Penal Code, 1860, at Police Station Lohi Bhear (Islamabad).

2. Briefly stated facts of the case, as narrated in FIR, are that the complainant namely Shafiq-ur-Rehman s/o Mian Bashir Ahmed, on 12-6-2013, reported to the SHO Police Station Lohi Bhear, Islamabad regarding theft from his house in his absence. Household items as mentioned in the FIR were found stolen/missing. Therefore, the above mentioned FIR was registered under section 380 of the Pakistan Penal Code, 1860 (hereinafter referred to as "PPC").

3. The petitioner was arrested in this case, on 12-4-2014, and according to the case of prosecution, on the same day, his father produced one Dispenser alongwith Bottle, LCD T.V. 32 Inch, UPS and Battery, whereupon, Section 411 of the PPC was also added.

4. The petitioner applied for his post arrest bail and his bail petition was dismissed by learned Addl. Sessions Judge, East-Islamabad vide order dated 28-6-2014; hence, the instant petition.

5. Learned counsel for the petitioner contends that the petitioner is innocent and has been involved in this case on ulterior grounds. The FIR was registered against unknown persons; petitioner is not nominated in the FIR; alleged recovery of stolen articles is concocted; the petitioner was initially arrested U/S 54 of the Criminal Procedure Code, 1908 (hereinafter referred to as "Cr.P.C.) and thereafter arrested in the instant case as well as other cases of similar nature. The learned counsel has further stressed that even otherwise the offence attributed to the petitioner falls within the non-prohibitory clause of Section 497 of the Cr.P.C. Moreover, the recovery attributed to him cannot be used as incriminating evidence against him. He has argued that bail in such like cases is a rule and refusal thereof is an exception. No grounds for bringing his case within the realm of exception exists. He has placed reliance the judgments reported as, Zafar Iqbal Versus Muhammad Anwar and others [2009 SCMR 1488] and Muhammad Abbas Versus State and another [PLJ 2012 Cr.C. (Lahore)].

6. On the other hand, the learned Standing counsel contested the bail application by arguing that the petitioner/accused is a habitual offender and is involved in three other similar cases, therefore, he is not entitled to the concession of bail, as his case falls within the exception of the rule relating to offences falling within non-prohibitory clause of Section 497 Cr.P.C.

7. With the able assistance of the learned counsel for the parties, the record has been perused, and after careful consideration, the findings of this Court are as follows.

8. The petitioner was not nominated in the FIR. Admittedly, he was arrested under Section 54 of Cr.P.C. whereafter, his father allegedly produced some of the stolen articles before the Police.

9. Even otherwise, the offences attributed to the petitioner in this case fall within non-prohibitory 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.

10. As far as argument of the learned Standing Counsel that the petitioner is a habitual offender and will repeat the offence in case of bail, is concerned, the same has no force, because the petitioner has been allowed bail in the other three cases; whereas, there is nothing on record to show that the petitioner is previous convict in any case of similar nature. Copies of the bail orders have been placed before this Court by the Investigating Officer. This court is not persuaded that the case of the petitioner falls within exception of the rule relating to grant of bail when offences fall within non prohibitory clause of section 497, Cr PC.

11. In view of the above discussion, instant bail petition is accepted and the petitioner is allowed to be released on bail, subject to furnishing bail bonds in the sum of Rs.1,00,000/- (rupees one lac only) with one surety in the like amount to the satisfaction of the learned trial Court.

(ATHAR MINALLAH)
JUDGE

Tanveer Ahmed.