HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.505-B/2014

GUL KHAN

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.

25-08-2014 Mr Zaheer Ullah Jan Advocate for the petitioner.
Mr Malik Fasial Rafiq Deputy Attorney General.
Mr. Abdul Waheed A.S.I. with record.

The petitioner Gul Khan son of Khanzada has sought post arrest bail in case, F.I.R. No.181, dated 30-04-2014, registered under Sections 381-A, 411, 413, 420, 468, 471 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Aabpara, Islamabad.

2. Brief facts are that on a written complaint of Asad Ullah above said FIR has been registered, wherein it is reported that the complainant had parked his car outside the CDA Hospital Islamabad. On his return, he found the car missing.

3. Learned counsel for the petitioner argued that; the petitioner is innocent and has been falsely implicated in this case; the offences mentioned in the FIR are not attracted in case of the petitioner; the petitioner is not nominated in the FIR; It is denied that the car was recovered from the petitioner; for the sake of argument, even if the recovery had been made from the petitioner, it would attract section 411 of PPC; the petitioner was arrested on 22-04-2014 in FIR No. 160, dated

22-04-2014 i.e one day before the date of occurrence in the present case; petitioner, after his arrest on 22-04-2014 was kept in illegal confinement and was arrested in the present case on 04-05-2014; FIR was registered after a delay of seven days as the date of occurrence is 23-04-2014 and the date of registration of FIR is 30-04-2014; the offences fall in the non-prohibatory clause of Section 497 Cr.P.C; the petitioner is a non convict; it is a case of further inquiry; this Court had granted him bail in FIR No.160 dated 22-04-2014; the petitioner is behind the bars since his arrest; investigation is complete and the petitioner is no more required for the purposes of investigation, hence he prays for enlarging the petitioner on bail. Reliance is placed on 2004 P.Cr.L.J 596, 2008MLD 769, 2012 MLD 197, 2012 MLD 1742, 2012 YLR 2739.

4. On the other hand, learned Deputy Attorney General opposed the bail and contended; that recovery of the car has been affected from the petitioner; petitioner is involved in the commission of offence; petitioner was arrested red handed; at the time of recovery the number plates on the vehicle were fake; challan has already been submitted on 07-05-2014. The learned Deputy Attorney General admits that the offences mentioned in the FIR fall in the non-prohibatory clause; However, both the learned Deputy Attorney General and the IO failed to give any plausible explanation regarding the arrest of the petitioner on 22-04-2014 in FIR No. 160. They admitted that the accused was arrested on 22-04-2014, but state that the arrest was "Mu'khar", kept pending.

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 vs 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 Vs. Muhammad Nadeem Dar and others (2011 SCMR 1708).

8. The F.I.R. in this case had been registered with a delay of seven days. The prosecution has not placed on record any material to suggest that the accused has been previously convicted. The question

as to whether or not the petitioner was arrested on 22-04-2014, whether the vehicle was recovered from the custody of the petitioner, calls for further probe. This Court has granted bail to the accused in case FIR No. 160 dated 22-04-2014. There is nothing on record to show that the accused has ever been convicted. The report under Section 173 Cr.P.C. has been submitted and trial shall proceed in accordance with law. The investigations qua the petitioner have already been finalized, therefore, his continued custody is not likely to serve any beneficial purpose at this stage. In the light of principles and law laid down by the Honourable Supreme Court in cases where offences fall within the non-prohibitory clause of Section 497 Cr.P.C., 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.500,000/- (Rupees Five Hundred Thousand) with two sureties 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

*Luqman/

Uploaded By: Zulqarnain Shah