HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.495-B of 2014

Saleem Shahzad alias Shani
VERSUS
Atta Ullah, etc

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

08-09-2014 Mr Munawar Hussain Abbasi, advocate for the petitioner.
Malik Zahoor Ahmad Awan, Standing Counsel.
Mr Ashraf, ASI with record.

This is the bail petition, in which notices were ordered to be served on the complainant on 07-08-2014. On 13-08-2014, a request was made on behalf of the complainant for adjournment. The complainant failed to appear on 26-08-2014 and it was ordered that notices be issued to the complainant informing her that in case no one appears on her behalf on the next date of hearing, the case shall be decided on its own merits. The case was fixed on 01-09-2014, but no one has appeared on behalf of the complainant and, therefore, yet another opportunity was given by adjourning the case. The petition was fixed on 08-09-2014 and no one made appearance for or on behalf of the complainant. As this Court had ordered on the last two dates that in case no one appears on behalf of the complainant, the case will be decided on its own merits, therefore, it is being decided accordingly.

2. The petitioner Saleem alias Shani son of Naseem Akhter has sought post arrest bail in case, F.I.R. No.631, dated 05-12-2013, registered under Section 382 / 411 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Industrial Area, Islamabad.

3. Brief facts as narrated in the FIR are that the complainant while travelling was forcibly stopped by two persons on a motorcycle, who fled after snatching items as described in the FIR.

4. The learned counsel for the petitioner contends that; the petitioner has been implicated in the present case falsely and with malafide intention; the petitioner is not nominated in the FIR; malafides are obvious from the fact that the petitioner was arrested on 05-04-2014 in another case and, thereafter, he was falsely implicated in two other cases; the petitioner was arrested in the present case on 07-05-2014; no direct recovery has been effected from the accused; he is not directly nominated in the FIR; no identification parade was conducted; there is no previous conviction; the petitioner is on bail in FIR No. 263 dated 04-05-2014, FIR No. 269 dated 05-05-2014 and FIR No. 101 dated 05-05-2014; the petitioner has been falsely implicated in all the cases including the present one; the petitioner has been implicated on the basis of supplementary statement made by the complainant dated 08-05-2014, which reflects the malafide; the supplementary statement of the complainant was recorded after a delay of five months. Reliance is placed on *2012 P.Cr.L.J. 611, 2012 P.Cr.L.J. 625, 2010 P.Cr.L.J. 702, 2011 P.C.L.J. 1819 and PLJ 2000 Cr.C. Lahore 963*. Hence the learned counsel urges for the release of the petitioner on bail.

5. The learned Standing Counsel appeared alongwith Ashraf, ASI and opposed the bail. It is contended that; the petitioner was arrested on 07-05-2014 in the present case; during investigation in another case i.e. FIR No. 127 of 2014 recovery of items in the present case was made on the pointation of the petitioner; the complainant has identified the petitioner and has nominated him in her supplementary statement; the petitioner is involved in the commission of the offence; hence it is prayed that the instant bail petition be dismissed.

6. After giving careful consideration to the arguments of the learned counsels and perusal of the record with their able assistance, the findings of this Court are as follows.

7. The petitioner is not nominated in the FIR and was not known to the complainant. Without conducting an identification parade in accordance with law, the petitioner was arrested in the present case on the basis of recovery made in

another FIR No. 127 of 2014. The petitioner was arrested in another case on 05-04-2014 and implicated in two other cases. While he was already in custody he was arrested on 07-05-2014 in the present case registered in December, 2013. The question that no identification parade was carried out and the police malafidely implicated the petitioner, calls for further probe. The petitioner is not previously convicted and has already been granted bail in other three cases. The investigations qua the petitioner have been finalized and he is no more required for the purpose. His continued incarceration shall not serve any beneficial purpose. The mere implication of the petitioner in other cases is not sufficient to disentitle him to bail. Therefore, this Court is of the opinion that the petitioner is entitled to bail.

08. 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.100,000/- (Rupees One Hundred Thousand) with one surety in the like amount to the satisfaction of learned Trial Court. However, keeping in view the other cases registered against the petitioner, the bail is granted on the condition that he shall make personal appearance on every hearing, unless exempted by the learned trial Court. In case he violates this condition, this bail may be recalled.

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

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on _____.

JUDGE

Asad K/

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