

2019 S C M R 1152

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, Sardar Tariq Masood and Yahya Afridi, JJ

ARSALAN MASIH and others---Petitioners

Versus

The STATE and others---Respondents

Criminal Petition No. 1396-L of 2018, decided on 3rd June, 2019.

(On appeal against the order dated 26.11.2018 passed by Lahore High Court, Lahore in Crl. Misc. No. 250104-B of 2018)

Criminal Procedure Code (V of 1898)---

---S. 497(2)---Penal Code (XLV of 1860), Ss. 380, 457 & 411---Theft in dwelling house, lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment, dishonestly receiving property stolen---Bail, grant of---Further inquiry---No direct evidence was available against the accused so far for the offence under S. 457, P.P.C. and prosecution relied upon certain circumstantial evidence which would be appreciated by the trial court after recording the evidence---Presently the case of the accused called for further inquiry as far as offence under S. 457, P.P.C. was concerned --- Other offences under Ss. 380 & 411, P.P.C. did not fall within the prohibition contained in S. 497, Cr.P.C. and in such like cases bail was a rule and refusal was an exception--- Accused was a previous non-convict and his involvement in another case of similar nature without any conviction could not be a reason for refusal of bail especially when such case was registered after the registration of the present case---Accused was granted bail accordingly.

Tariq Bashir and 5 others v. The State PLD 1998 SC 34 distinguished.

Irfan Malik, Advocate Supreme Court for Petitioners.

M. Jaffar, DPG for the State.

Barrister Harris Azmat, Advocate Supreme Court for Respondent No.2.

Date of hearing: 3rd June, 2019.

ORDER

SARDAR TARIQ MASOOD, J.---Through this petition, petitioners Arsalan Masih and Muhammad Nadeem have sought leave to appeal against the order dated 26.11.2018 passed by a learned Judge in Chamber of the Lahore High Court, Lahore through which post-arrest bail was declined to both the petitioners in case FIR No. 734 registered on 14.05.2018 at Police Station Nawab Town, Lahore in respect of offences under sections 457, 380, 411, P.P.C.

2. After arguing the case at length, learned counsel for the petitioners opted not to press this petition to the extent of petitioner No.1 Arsalan Masih. Hence, this petition is dismissed to the extent of petitioner No.1 Arsalan Masih as not pressed.

3. After hearing the learned counsel for the petitioner No. 2 Muhammad Nadeem learned counsel for the state and the learned counsel for the complainant, we observe that

there is no direct evidence against the petitioner so far offence under section 457, P.P.C. is concerned and prosecution relied upon certain circumstantial evidence which will be appreciated by the trial court after recording the evidence but presently the case of the petitioner No. 2 calls for further inquiry so far offence under section 457, P.P.C. is concerned. So far offence under sections 380 and 411, P.P.C. are concerned both these offences do not fall within the prohibition contained in section 497, Cr.P.C. and in such like cases bail is a rule and refusal is an exception. The exceptions mentioned in the case of Tariq Bashir and 5 others v. The State (PLD 1998 SC 34) are not attracted to the case of petitioner No.2 as he is previously non-convict and his involvement in another case of similar nature without any conviction could not be a reason for refusal of bail especially when such case was registered after the registration of the present case. Consequently, this petition is converted into an appeal and the same is allowed only to the extent of Petitioner No. 2 Muhammad Nadeem. He is granted post-arrest bail in the instant case subject to his furnishing bail bond in the sum of Rs. 100,000/- (Rupees One Lac only) with one surety in the like amount to the satisfaction of the learned trial court concerned.

4. These are the reasons of our short order passed today i.e. 03.06.2019 which is reproduced as under:

"There are two petitioners arrayed before us. The learned counsel for the petitioners does not press this petition in respect of petitioner No.1, namely, Arsalan Masih, therefore to his extent this petition is dismissed as not pressed.

2. As regards petitioner No. 2, namely, Muhammad Nadeem for reasons to be recorded later, this petition is converted into appeal and allowed and he is granted bail in the sum of one hundred thousand rupees with P.R. bond in the like amount to the satisfaction of the trial Court."

MWA/A-16/SC

Order accordingly.