

**2020 M L D 153**

**[Peshawar (Abbottabad Bench)]**

**Before Shakeel Ahmad, J**

**KARAMAT ULLAH---Petitioner**

**Versus**

**The STATE and another---Respondents**

Criminal Miscellaneous (B.A.) No. 493-A of 2019, decided on 16th September, 2019.

**Criminal Procedure Code (V of 1898)---**

---S. 497---Penal Code (XLV of 1860), Ss. 380, 411 & 34---Theft in dwelling house, dishonestly receiving stolen property, common intention---Bail, grant of---Bailable offences---Scope---Accused was charged for committing theft from the shop of complainant---Accused was named in the crime report but the complainant had not disclosed his source of information and satisfaction for charging the accused---Crime was unwitnessed---SIM card of mobile phone and cash amount were handed over to the police by the brother of accused and nothing incriminating was recovered from the possession of accused or at his pointation---Offences with which accused was charged fell within the non-prohibitory clause of S.497, Cr.P.C. and in such like cases grant of bail was a rule, while its refusal was an exception---Bail was granted, in circumstances.

Muhammad Tanveer v. The State PLD 2017 SC 733; Arsalan Masih and others v. The State 2019 SCMR 1152 and Abdul Waheed v. The State and another 2017 YLR Note 5 ref.

Khalid Rehman Qureshi for Petitioner.

Raja Muhammad Zubair, A.A.G. for the State.

Khan Zada Khan for the Complainant.

Date of hearing: 16th September, 2019.

## **JUDGMENT**

**SHAKEEL AHMAD, J.**---Petitioner Karamat Ullah has moved this petition for grant of post arrest bail in Crime No. 37 dated 18.07.2019 registered under Sections 380/411/34, P.P.C. at Police Station Nara Amazai Tehsil Ghazi District Haripur, wherein he is charged for committing theft from the shop of complainant.

2. Learned counsel for the petitioner contended that though the petitioner has been named as an offender in the initial report, lodged by the complainant, but he has not disclosed his source of information and satisfaction for charging the petitioner; that nothing incriminating articles were recovered from personal possession of the petitioner; that the offences with which the petitioner is charged do not fall within the restrictive clause of Section 497, Cr.P.C. and in such like cases grant of bail is a rule while its refusal is an exception and that the prosecution case requires further probe into the guilt of the petitioner, therefore, he deserves the concession of bail.

3. Conversely, the learned Additional Advocate General and learned counsel for the complainant jointly argued that the petitioner has specifically been charged in the crime report for committing theft in the shop of the complainant; that the incriminating articles were handed over by brother of the petitioner to the police, which too suggests that the petitioner is involved in the alleged crime and that there are reasonable grounds to believe that the petitioner has committed a non-bailable offence, therefore, he is not entitled to the concession of bail.

4. I have heard learned counsel for the parties and gone through the record with their valuable

assistance.

5. No doubt, the petitioner has been named as an offender in the crime report but the complainant has not disclosed his source of information and satisfaction for charging the petitioner. Admittedly, it is an unwitnessed crime. So far as recovery of Telenor SIM and some cash amount is concerned, those were handed over to the police by brother of the petitioner and nothing incriminating articles were recovered from personal possession of the petitioner or at his pointation. Even otherwise, the offences with which the petitioner is charged do not fall within the prohibitory limb of Section 497, Cr.P.C. and in such like cases grant of bail is a rule while its refusal is an exception. In this respect reliance can be placed on the cases law reported as Muhammad Tanveer v. The State PLD 2017 SC 733, Arsalan Masih and others v. The State 2019 SCMR 1152 and Abdul Waheed v. The State and another 2017 YLR Note 5 [Peshawar (D.I. Khan Bench)]. In my view case of the petitioner does not fall within the exception.

6. For what has been discussed above, this petition is allowed and the petitioner is directed to be released on bail provided he furnishes bail bonds in the sum of rupees eighty thousand (Rs.80,000/-) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

SA/210/P

Bail granted.