

**2018 P Cr. L J Note 45**

**[Lahore]**

**Before Shahid Hameed Dar, J**

**ABDUL QAYYUM---Petitioner**

**Versus**

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

Criminal Misc. No. 5999-B of 2016, decided on 16th June, 2016.

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

---Ss. 497 & 498---Penal Code (XLV of 1860), S. 381---Theft by servant of property in possession of master---Bail, grant of---Complainant had alleged that, accused who stole a sum of Rs.20,00,000 from bag of his wife, was employed at his house for about 5/6 years as domestic servant--Forensic Science Agency declared accused as truthful person after his polygraph examination---Accused was let off by police after report of Forensic Science Agency---Service of accused for 5/6 years in the house of complainant did not connect him with the alleged offence---Wife of complainant was joined in investigation after four months---Investigating officer failed to collect any incriminating material against accused---Probability existed that accused might have been falsely involved in the case---Ad interim pre-arrest bail was confirmed by the High Court. [Para. 5 of the judgment]

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

---Ss. 497 & 498---Pre-arrest bail---Scope---Accused named in FIR without supporting material was entitled to bail. [Para. 5 of the judgment]

Mehr Muhammad Iqbal for Petitioner.

Rana Tasawar Ali Khan, Deputy Prosecutor-General Punjab along with Taj Ali, ASI with record for the State.

Amjad Iqbal Khan for the Complainant.

**ORDER**

**SHAHID HAMEED DAR, J.**---Brig (R) Nisar Ali has alleged in FIR No.65/2016, dated 17.01.2016, under section 381, P.P.C., Police Station Defence-A, Lahore that Abdul Qayyum (petitioner) was employed at his

house for about 5/6 years as a servant, who stole a sum of Rs.20,00,000/- (twenty-lacs) from the bag of his wife.

2. It has been contended by the learned counsel for the petitioner that a baseless allegation has been levelled against the petitioner, who served his master wholeheartedly for years, but earned his wrath in return: the petitioner's innocence was confirmed by the Punjab Forensic Science Agency, as it termed him a truthful person after conducting his polygraph examination on 22.01.2016; the petitioner did no wrong to the complainant, a retired Brigadier of Pak Army, it is why, the investigating officer failed to collect any incriminating material against him during five months investigation; lastly contended that the petitioner has been falsely involved in this case merely on a baseless suspicion of the complainant, therefore, he may be saved from the excesses of the police, that he has already faced for about three weeks and he may be granted the relief prayed for.

3. On the contrary, learned counsel for the complainant has argued that the petitioner is named as an accused in the FIR with the specific allegation of thieving Rs.20,00,000/- from his master's mansion, where, he being an old servant, had access to every part of the house, which position, he exploited to commit the offence; the polygraph test of the accused was not properly conducted as the Psychiatrist interviewed him unbefittingly; the stolen amount is still to be recovered, hence, the petitioner's plea for bail may be turned down.

4. Learned Deputy Prosecutor General Punjab only made it a point that the investigating officer failed to collect any incriminating material against the petitioner during the course of investigation, which apparently tended more but to his innocence.

5. After hearing the learned counsel for the parties and perusing the record, it is observed that the petitioner underwent Polygraph Examination/Forensic Psychological Truth Verification Examination by the PFSA on 22.01.2016 and his test report read as under:-

**"Conclusion:**

It is my professional opinion, based on significant responses to the formulated test questions, that Mr. Abdul Qayum son of Ehsan-Ullah can be confirmed as truthful on his statement that he did not remove twenty lac from Nisar's house in this case of theft."

The record reveals that the petitioner was made to join the investigation on 22.01.2016. His arrest, because of insufficient connecting material, against him, was deferred by the investigating officer, who preferred to

produce him before a psychological analyst at the Punjab Forensic Science Agency Lahore, who conducted the requisite test and formulated the above said report, that dubbed him a truthful person. It may not altogether be false, as argued by his learned counsel, that the petitioner remained with the police for a number of days immediately after registration of the FIR on 17.01.2016 and he was let off by them only after the issuance of the above said report by the PFSA. The petitioner may have remained a house servant with the complainant for 5/6 years but it did not necessarily mean that he had committed the alleged offence. The better-half of the complainant, whose money had allegedly/ stealthily been removed joined investigation about four months after registration of the case and she offered no explanation as to why she kept quiet for such a long period of time. Despite registration of this case against the petitioner about five months before, the investigating officer could not collect any incriminating evidence against him so far. The FIR-case has, in fact, not budged even a single inch toward guilt of the petitioner and it was still a matter, wherein learned counsel for the complainant could not, but argue, that he was named in the FIR as an accused and offence under section 381, P.P.C. was not bailable. Mere mentioning of name in the FIR, without any supporting incriminating material, cannot be deemed sufficient to deny the bail-plea of the petitioner. This is a rare case wherein, the investigating officer preferred to conduct the investigation on scientific lines and made the accused/petitioner undergo the psychological test, which remained unproductive for the prosecution. An equal probability exists that the petitioner may have been falsely involved in this case due to some faulty estimation of the complainant. Sending him to jail in such a situation may not be advisable, as liberty of a man is much costlier than the whimsical estimation of someone.

6. Therefore, this application is accepted and ad-interim pre-arrest bail granted to the petitioner vide order dated 12.05.2016 is confirmed subject to furnishing fresh bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of this court.

Before parting with this order, it is directed that the accused/petitioner shall keep joining the investigation, as and when required by the I.O. If he hesitated in doing so, the complainant would be at liberty to move against him under section 497(5), Cr.P.C.

WA/A-86/L Bail confirmed.

