ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Misc. No. 1355-BC of 2020

Syed Muhammad Zubair
Versus
Faisal Akbar and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	28.01.2021	Raja Muhammad Khan, Advocate for the petitioner. Sardar Waqas Naseer, Advocate for the accused / respondents. Mr. Zeeshan Jalal, State Counsel. Qasim Niazi, DSP. Muhammad Rasheed, ASI. Through the instant petition, the petitioner seeks cancellation of the pre-arrest bail granted to the respondent No. 1 to 5 vide orders dated 26.11.2020 and 12.12.2020 passed by learned Additional District & Sessions Judge (East), Islamabad, in case FIR No. 508/20, dated 28.08.2020, offences under sections 324, 341, 269, 337-F(V), 34 P.P.C, registered at police station Koral, Islamabad . 02. Brief facts of the case are that the complainant namely Syed Muhammad Zubair lodged a case FIR No. 508/2020, dated 28.08.2020, offences under sections 324, 341, 337-F(V), 269, 34 P.P.C, at police station Koral, Islamabad, wherein he alleged that he has long dispute / litigation with the respondents/accused nominated in the FIR regarding the illegal encroachments. On 24.08.2020, two unknown persons muffled with masks came on motorcycle, whereas one of them

attacked on the complainant with dandas and consequently the complainant became injured and the said unknown accused fled away from the scene.

03. Learned counsel for the petitioner *inter-alia* contends that the sufficient evidence is available against the accused / respondents. It is clearly proved from the documents that the complainant has initiated the civil and criminal proceedings against the respondents/accused for removal of the illegal encroachments etc and due to said grudge, the respondents/accused have engaged / hired two unknown persons who have attacked on the complainant on 24.08.2020, so the learned court was not justified for accepting the bail before arrest of the respondents.

04. Arguments heard, record perused.

05. According to the facts of the case, there are two sets of accused as per the allegation. The petitioner / complainant has initiated civil and criminal litigation against the respondents / accused nominated in the FIR and he apprehends that upon the instigation of the accused nominated in the FIR, two unknown persons have attacked on the complainant on the day of occurrence but there is no evidence against the respondents that they have hired / engaged the said two unknown persons who have launched attack on the day of occurrence, even the DSP has conducted an inquiry, wherein he has submitted that there is no evidence against the accused nominated in the FIR

that they have participated in the commission of crime.

06. Principle for grant of bail and its cancellation are different, it has been held by the Hon'ble Supreme Court of Pakistan in case titled as "*Sami Ullah and another V. Laiq Zada and another (2020 SCMR 1115)*" "*bare perusal of provision of section 497(5), Cr.P.C. it do not demonstrate any specific ground to press into the pretense of said provision of law, however, superior courts of the country from time to time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-*

- *i) If the bail granting order in patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.*
- *ii) That the accused has misused the concession of bail in any manner.*
- *iii) That accused has tried to hamper prosecution evidence by persuading / pressurizing prosecution witnesses.*
- *iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.*
- *v) That the accused has attempted to interfere with the smooth course of investigation*
- *vi) That accused misused his liberty while indulging into similar offence.*
- *vii) That some fresh facts and material has been collected during the course of investigation with tends to establish guilt of the accused.*

6. Ordinarily the superior courts are reluctant to interfere into the order extending concession of bail; rather they have shown reluctance to intervene in such like matters. The rationale behind in that once concession of bail is granted

by a court of competent jurisdiction then very strong and exceptional grounds would be required to hamper with the concession extended to a person who is otherwise clothed with free life, any contrary action of the court would be synonymous to curtailing the liberty of such person, which otherwise is a precious right guaranteed under the Constitution of the country".

07. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out a case for cancellation of bail granted to the respondents No. 1 to 5 by the learned Additional District & Sessions Judge (East), Islamabad vide orders dated 26.11.2020 and 12.12.2020, consequently, the instant petition stands *dismissed* being meritless.

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

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal