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

Criminal Misc. No. 918-BC/2021
Aamir Sajjad
Versus
Muhammad Fazal etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.01.2022:	M/s Qaiser Imam Chaudhry & Malik Fakhar Ali Advocates for petitioner, Mr. Aimal Amjad, learned State Counsel with Akram Cheema Inspector, Mian Muhammad Arshad Javed, Advocate for respondent No.1.

This Crl Misc. under Section 497(5) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**") is arising out of order dated 06.09.2021, passed by the learned Additional Sessions Judge, Islamabad-East whereby respondent No.1/accused Muhammad Fazal was allowed post arrest bail in case FIR No.537, dated 09.06.2020, under Sections 365, 302, 109 & 34 PPC, Police Station Koral, Islamabad.

2. Relevant facts are that the subject FIR was got registered by the petitioner/complainant initially on the allegation of abduction of his brother Atif (deceased). Subsequently, on the discovery of dead body, offences under sections 302, 109 & 34 PPC were inserted vide Zimni No.02, dated 10.06.2021.

3. Respondent No.1 was implicated on the basis of supplementary statement of the petitioner/complainant petitioner recorded on 10.06.2021 wherein he implicated the said

respondent to be the person on whose instigation principal accused Abdullah committed murder of his brother Atif. After the registration of FIR, respondent No.1 was arrested, investigated and thereafter moved application for post arrest bail which was allowed vide impugned order.

4. Learned counsel for the petitioner contends that in presence of specific allegation of instigating and ample incriminating material available on record, there was no justification to extend concession of bail in a case entailing capital punishment. Learned counsel placed reliance upon case law reported as 2020 SCMR 2089, 2006 SCMR 1265 and Order dated 23.09.2021 passed by this Court in Crl Misc. 884-B/2021.

5. On the other hand, learned counsel for the respondent No.1/accused contends that no incriminating material has come on record against the respondent; that there was merely an allegation of instigation and that no ground has been urged warranting cancellation of bail, therefore, petition is liable to be dismissed. Learned counsel placed reliance upon case laws reported as 2021 SCMR 87, 2020 SCMR 1115 and 2021 SCMR 1909.

6. Heard, record perused.

7. The Hon'ble Supreme Court of Pakistan in the recent ***Order dated 08.11.2021 in case of Abdul Majeed Afridi v. The State and Abdul Latif Afridi, Crl. P. No. 632 of 2021*** while deciding bail cancellation petition in a murder case having offence of abetment has graciously held that "*we have perused the crime report with naked eye and found that the*

complainant while lodging crime report has not mentioned specific date, time and place where the conspiracy was hatched. Even name and number of witnesses to that extent is not incorporated while lodging the FIR." It has further been observed that "*we have noticed that there is nothing on the record where the prosecution has advanced its case qua conspiracy in any manner except the bald allegation which is incorporated in the FIR without citing any witness of the said aspect of the case*".

8. The Hon'ble Supreme Court of Pakistan elaborated necessary ingredients of Section 107 PPC, in terms that *"perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment. All these three ingredients of Section 107 PPC are prima facie missing from the record. We do not want to give any finding in this regard because it can prejudice the case of either of the party."*

9. In the present case, no incriminating material has been highlighted by learned counsel for the petitioner that respondent No. 1 had been engaged with co accused and also extended aid in commission of offence.

10. The Hon'ble Supreme Court of Pakistan, in the referred order, has reiterated the principles governing cancelation of bail laid down in the case of "**Samilullah and another V. Laiq Zada and another** (2020 SCMR 1115), followed in Criminal Petition Nos. 1459/2020, 1523/2020, 970 to 976/2021

& Criminal Petition No. 1145-L of 2020: which are as under:-

"i) If the bail granting order is 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."

.

11. As mentioned above, the impugned order, in the backdrop of facts of the instant case, appears to be just and in consonance with the law on the subject and cannot be termed to be an erroneous order while learned counsel for the petitioner, despite query, also remained unable to highlight any ground warranting cancellation of bail as prayed for.

12. The law is by now well settled that for cancellation of bail in terms of Section 497(5) of the Cr. PC, strong and exceptional grounds warranting interference in the bail granting order are required. Section 497 (5) Cr.P.C does not empower the court to cancel the bail even when the offence is punishable with capital punishment and the discretion termed

as *pari materia* with the principle to be applied for upsetting the order of acquittal. Reliance is placed upon case of "***Muzaffar Iqbal V. Muhammad Imran Aziz and others (2004 SCMR 231)*** *and* ***Khalid Ahmad Soomro and others V. The State (PLD 2017 SC 730).***

13. The case laws relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

14. In view of above, the instant petition is devoid of merits and is accordingly **dismissed**.

(ARBAB MUHAMAMD TAHIR)
JUDGE

Kamran