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

Crl. Misc No. 1085 of 2021
Syeda Farhat Raza Zadi-Vs-Amin-ud-Din, etc.

Crl. Revision No. 03 of 2022
Amin-ud-Din & another-Vs-Syeda Farhat Raza, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.06.2022	Syed Yousaf Khan & heryar, Advocates for petitioner. Mr. Qaisar Imam Ch, & Ahsan Shoaib, Advocate for respondent. Mr. Hammad Saeed Dar, State Counsel along with Akhtar, S.I.

ARBAB MUHAMMAD TAHIR, J: This single order shall dispose of the captioned Crl. Misc. *(1085/2021*) and Crl. Revision *(03/2022*) as both emanate from order dated 24.09.2021, passed by the learned ASJ, Islamabad-West, whereby application in terms of Section 497 (5) Cr.P.C, filed by the complainant/'**petitioner**' namely *Syeda Farhat Raza Zadi* was accepted and in consequence thereof bail granted to accused/ '**respondents**' namely *Amin-ud-din and Ahmed Amin-ud-din* by the learned ASJ, Islamabad-West vide order dated 16.09.2020 was cancelled subject to return of amount of Rs. 3,500,000/- received by the complainant in the Court in the shape of cheque in the name of Asia Amin.

2. Precisely, on 26.03.2020, at about 5:35 pm, petitioner moved an application to the Police Station Golra Islamabad, alleging therein that she is resident of House No. 94, St No. 33, Sector G-11/1, Islamabad; that his son namely Syed Ahmed Hassan, yesterday at about 6:58 pm, went to see his friend Ahmed Khan in Sector G-13/4, Islamabad; that at the relevant time his son was healthy and had no symptoms of being effected from Corona Virus and had also no medical history; that his son also contacted her and informed about his presence with Ahmed and return in the next morning; that on the next morning, she called her son which

was not responded either by Ahmed Khan and then she came to know about the death of his son and presence of her dead body in the mortuary; that her son was quite fit and healthy and that she has believe that Ahmed Amin Khan and his family committed murder of his son by administering some kind of intoxicant.

3. On the application of the petitioner subject FIR (*172/2020*) was registered and the usual investigation was carried out by the police. During the course of investigation, the specimens (*blood, liver, spleen, kidney, stomach with contents and small intestine*) were taken and sent to the Punjab Forensic Science Agency, Lahore for Forensic Toxicology Analysis, report whereof concluded detection of *"codeine", "morphine"* and *"dextromethorphan"* in the specimens. After due investigation, as per police report, the challan was submitted in the Court on 13.08.2020.

4. It is significant to note that the respondents remained unsuccessful to obtain bail on merits up till this Court. In the second attempt, they succeeded to obtain post-arrest bail on the basis of compromise vide order dated 16.09.2020 passed by the learned ASJ, Islamabad-West. It is necessary to reproduce operative Para-3 & 4 of the said order:-

> *"03. Complainant Mst. Farhat Raza Zaidi appeared before the Court on 14.09.2020 and submitted her affidavit and got recorded her statement to the effect that she has forgiven the petitioner/accused for the purpose of their bail. That she is sole legal heir of deceased Ahmed Hassan as at the time of occurrence, her son was unmarried. Report was also called from SHO concerned for verification of legal heirs. As per report, the father of deceased had already died whereas his mother Syeda Farhat Raza Zaidi who is also the complainant of this case is the sole surviving legal heir of deceased.*
>
> *04. The offence with which the petitioners/accused is charged is compoundable in nature therefore keeping in view the above, petitioners are admitted to bail subject to furnishing bail bonds in sum of Rs. 50,000/- (fifty thousands) each with one surety each to the satisfaction of learned Trial Court.*

5. As mentioned above, the reasons prevailed with the learned ASJ, Islamabad-West for extending concession of bail in a murder case were to the effect that the petitioner/complainant tendered

affidavit besides got recorded her statement, whereby she had forgiven the respondent/accused for bail purposes; ***that she is sole legal heir of deceased Ahmed Hassan*** as he was unmarried and that as per ***police report duly verified by the concerned SHO the petitioner/complainant was the sole surviving legal heirof the deceased.***

6. The reasons to which emphasis added, made basis to extend the concession of post-arrest bail in murder case on the basis of compromise found contrary to the facts emerged during hearing of the petitions. It is important to mention that no list of legal heirs was available on police record. On this, the Investigating Officer was directed to procure the list of LRs of the deceased from the NADRA as per the CNIC and the report so tendered reflects family tree of the late in following terms:-

Family Information			
Relation	Name	CNIC	Date of Birth
Mother	Syed Fahat Raza Zaidi	31303-3629576-8	01.01.1975
Father	Syed Khursheed Al Hassan	31303-8184571-1	18.04.1966
Sister	Syeda Mah Raza Zaidi	61101-25432514	19.08.2012
Sister	Syeda Bint-e-Zahra	31303-4843588-2	29.11.1999
Brother	Syed Ahmed Hassan	31303-4713348-3	03.04.2004
Father	Syed Ahmed Raza Zaidi	61101-3223163-5	31.12.1957
Self	Syed Ahsan Abbas	31303-2838724-5	31.08.1995

7. Adverting to the terms of compromise depicted in settlement/compromise deed it is noticed that the petitioner/complainant agreed to struck compromise against Rs. 7500,000/- and the nature of the amount, disbursed or to be

disbursed to the petitioner was mentioned as "*diyat*" while the contents of the affidavit read as under:-

> i. That it is agreed between the parties that the above said settlement /compromise deed is being finalized inconsideration of Rs. 7500,000/- (Seven million and five hundred thousand Pak rupees) only;
>
> ii. That the above said payment will be handed over by the accused representative to the complainant into two installments.
>
> a. That the first installment of Rs. 3.500,000/- (Three Million and Five hundred Thousands Pak Rupees Only) via pay order No. 22568545 dated 11.09.2020 issued by the bank, HBL, SUPER MARKET, PESHAWAR, (0959) CANTT PLAZA SADDAR RD. PESHAWAR (BY BILAL UD DIN BANK ACCOUNT) in the name of Mrs. Syeda Farhat Raza Zadi that has been handed over to the complainant in presence of witnesses and Arbitrator and as agreed, the complainant has provided its acknowledgement of Pay order re3ceiving and an affidavit, concerning NO OBJECTION CERTIFICATE if favour of both accused for their bail petition that is being filed today dated 12.09.2020;
>
> b. That it is also agreed that second installment of Rs. 4,000,000/- (Four Million Pak rupees Only) will be given to the complainant within an year through pay order, demand draft, direct bank transfer or through cash and in that consideration, the complainant will record her compromise statement in the trial and forgive both of the accused (just in this world) on the basis of their OATH that they are not involved in the murder of her innocent deceased son namely Syed Ahmad Hassan son of Khursheed-ul-Hassan;

8. Heard.The circumference of the arguments advanced from both the sides had been to the effect that once compromise would be presumed as compromise for always while as per petitioner's stance as the respondents failed to honor their commitment made through the affidavit, concession of bail granted to them may be recalled.

9. The prime question that needs to be answered is as to whether any private compromise reached between the parties in a murder case at bail stage can be accepted as valid or otherwise. That aspect, of course, was not considered by the learned ASJ,

Islamabad-West while passing the impugned order while the question with regard to competency of the petitioner to effect compromise being sole legal heir is also to be answered. It also appears that the learned Court of first instance omitted to take into consideration the principles on the subject laid down by the Hon'ble Apex Court in the case of **Tariq Mehmood** (*PLD 2016 SC 347*) and **Muhammad Akram**(*2005 SCMR 1342*).

10. In-addition, the veracity of the impugned order is being questioned by both the sides while the facts and the law noted above were also not taken into consideration. Resultantly, both the captioned petitions, for reasons mentioned above, are **allowed.** Impugned order dated 24.09.2021 is set aside and the matter is remanded to the learned trial Court for decision afresh on the application under section 497 (5) Cr.P.C, filed by the petitioner after taking into consideration all attending circumstances including one highlighted above, by giving due audience to both the sides at the earliest.

11. Before parting with the order, it is deemed necessary to mention that the way proceedings were carried out before the Court of first instance, *prima facie*, reflect foul play and if it is so, the learned SJ/ASJ, to be vested with the decision afresh pursuant to order ibid, shall recommend action against the delinquents in due course under intimation to this Court through the Registrar for perusal in Chambers.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on _____.09.2022

JUDGE

ISLAMABAD │09.2022
APPROVED FOR REPORTING

//*Kamran*//

ORDER-SHEET

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Vide consolidated order of even date, passed in Crl. Misc. No.1085 of 2021, the instant criminal revision is **allowed.** Impugned order dated 24.09.2021 is set aside and the matter is remanded to the learned trial Court for decision afresh on the application under section 497 (5) Cr.P.C, filed by the respondent after taking into consideration all attending circumstances including one highlighted above, by giving due audience to both the sides at the earliest.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on _____.09.2022

JUDGE

//Kamran//*