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

Criminal Misc. No. 1400-BC/2021

Robina Basharat

Versus

Faisal Masih, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	03.06.2022	Imran Feroz & Muhammad Mohsin, Advocates for petitioner. Syed Adnan Abbas Shah, Advocate for respondent. Ms. Saadia Shahzadi, State Counsel. Mr. Muhammad Akram Cheema, Inspector/I.O.

This Crl Misc. under Section 497(5) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**") is arising out of order dated 18.12.2021, passed by the learned Additional Sessions Judge, Islamabad-East whereby respondent No.1/accused Faisal Masih was allowed post-arrest bail in FIR No. 902, dated 23.10.2021, under Section 302, 34 PPC, Police Station Koral, Islamabad.

2- The FIR got registered on the written application of petitioner/complainant Robina Basharat, wife of deceased Basharat Masih, who described the rueful incident that on 23.10.2021, at about 7:15 p.m. respondent No. 1 along with the other nominated accused persons made firing upon Basharat Masih, hitting him on his abdomen and he succumbed to the said injuries.

3- After the registration of FIR and on completion of investigation, respondent No. 1 applied for post-arrest bail, which was allowed vide order dated 18.12.2021, passed by the learned Additional Sessions Judge, Islamabad-East, being impugned herein.

5- Learned counsel for the petitioner assisted by learned State Counsel contended that sufficient incriminating material is available on record which connects the respondent No. 1 with the commission of alleged offence. The learned counsel stated that the disclosure made by the respondent No. 1 led to the discovery of crime weapon used for the commission of the offence and got the same recovered; He further stated that challan has already been submitted and in such consequence there was no justification with the learned Trial Court to exercise discretion in favour of the respondent, as the alleged offence falls within the ambit of prohibitory clause of Section 497 Cr.P.C. and entails capital punishment. Learned State Counsel relied upon case law reported as, **2021 SCMR 1225 and 2020 SCMR 2089.**

6- On the other hand, learned counsel for the respondent No. 1 contends that no incriminating material has come on record against the respondent; that no overt act is attributed to him while nothing was recovered from his possession and that no ground has been urged warranting cancellation of bail as contemplated in section 497 (5) Cr.P.C, therefore, petition is liable to be dismissed. Learned counsel relied upon order of the Hon'ble Apex Court in **(Crl. P. No. 1228 of 2020)** ***Sharif Khan v. The State and another.***

6- Heard, record perused.

7- Perusal of the record reveals that the respondent No. 1 was nominated in the instant FIR with specific role of firing. Respondent was arrested in the instant matter on 28.11.2021 and later on he was sent to judicial custody.

8- During investigation he made disclosure and a .30 bore pistol was recovered on his pointation, afterwards the pistol was sent to Forensic Science Laboratory (FSL) for examination, but the crime empties never matched with the pistol recovered from the respondent. In the instant FIR, the respondent is saddled with the allegation of firing and sharing common intention with the nominated accused persons.

9- The role attributed to the respondent No.1 is of sharing common intention with the principle accused, will be decided by the trial Court after recording the evidence gathered by the prosecution during the investigation.

10- 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 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 which tends to establish guilt of the accused."

11- The limits on the subject are explicit and guide to hold that a bail granting order being patently illegal, either erroneous or factually incorrect can be interfered with, particularly when the same is in defiance of the material available on the record.

12- Reliance is placed upon case law reported as ***"Maqbool Ahmed Mahessar & others v. National Accountability Bureau through its Chairman & others."*** **(2021 SCMR 1166)**. *Grant of bail is a discretionary relief, however, exercise of discretion must be*

structured on sound judicial considerations, objectively deducible from the record of the case. Particularly in cases punishable imprisonment for 10 years or above, thus, grant of bail in this regard thereof, by itself constituted a strong ground, justifiable calling for interference. Reliance in placed upon ***Noor Aslam v. The State*** **(2021 SCMR 1225)**. *Bail granting order could be cancelled if the same was perverse. In legal parlance, a perverse order was defined as an order which was, inter-alia, entirely against the weight of the evidence on record. An order granting bail would be perverse and contrary to the principles of law if the same was passed by ignoring material evidence on record and without giving reasons. In cases where the Court granting bail ignored relevant material indicating prima facie involvement to the accused in the commission of crime or took into account irrelevant material, which had no relevance to the question of grant of bail to the accused, then the court reviewing such order would be justified in cancelling the bail. Reliance in placed upon* ***Sidra Abbas v. The State (2020 SCMR 2089)*** *Reliance is also placed on* ***(2010 SCMR 580).***

13- In view of above, the impugned order being in accordance with the material collected by the prosecution, does not call for any interference. Consequently, instant criminal misc. fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//