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

Criminal Misc. No. 497-BC/2022

Abdul Hameed
Versus
The State and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.05.2022:	Mr. Sajjad Hussain Malik, Advocate for petitioner/ complainant, Mr. Shahid Mahmood Langrial, Advocate for respondent No.2/accused. Syed Shahbaz Shah, State Counsel with Sarwar Naeem, S.I

This Crl Misc. under Section 497(5) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**") is arising out of order dated 19.03.2022, passed by the learned Additional Sessions Judge, Islamabad-West whereby respondent No.2/accused *Ayesha Bibi* was allowed post-arrest bail in FIR No. 628, dated 14.11.2021, under Section 302, 201, 34 PPC, Police Station Kohsar, Islamabad.

2- As per FIR that stood registered on the written application of Abdul Hameed, complainant, brother of deceased Muhammad Shakeel, describe the rueful incident that on 14.11.2021, at about 12:30 p.m. he received telephonic call from his sister-in-law Mst. Ayesha (respondent No.2) about the murder of his brother Muhammad Shakeel by two young men with firing within the area of forest range near Pathar Point, Daman-e-Koh, Islamabad.

3- During the course of investigation, respondent No.2 confessed her guilt and pursuant to her disclosure, co-accused Abdul Manan was also booked in the FIR, who then got recovered crime weapon besides three gold rings allegedly given to him by the respondent No.2.

4- After the registration of FIR and on completion of investigation, respondent No.2 applied for post-arrest bail, which

was allowed by the learned Additional Sessions Judge, Islamabad (West) vide order dated 19.03.2022, being impugned through the instant bail cancellation petition.

5- Learned counsel for the petitioner assisted by learned State Counsel contended that the impugned order is perverse and against the record as sufficient incriminating material has been collected by the prosecution whereby respondent No. 2's involvement in pre-planned and pre-meditated murder of her husband is quite visible as it was only after the disclosure of respondent No. 2 that surfaced the whole story with regard to the doing a way of the deceased. The recovery of the three gold rings belonging to the respondent No. 2 from co-accused Manan who further disclosed and got recovered crime weapon, the motorcycle allegedly used for the commission of the offence while call data record also confirms her active participation and complicity for alleged cold blooded murder of her husband; that the statement of taxi-driver also lends support to the events happened till the murder of the deceased Shakeel. According to the learned counsel, 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 No. 2, 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 titled, **2021 SCMR 1225 and 2020 SCMR 2089.**

6- On the other hand, learned counsel for the respondent No. 2 contends that no incriminating material has come on record against the respondent; that no overt act is attributed to her while nothing was recovered from her possession and that no ground has been urged warranting cancellation of bail as enshrined in 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.***

7- Heard, record perused.

8- Perusal of record reveals that the respondent No. 2 was arrested in this case on 29.12.2021. During investigation, she disclosed all the material particulars with regard to hatching of conspiracy for the murder of her husband (deceased Muhammad Shakeel). The perusal of disclosure made by the respondent No.2 reveals that she got married on 16.10.2021 with the deceased and just after 28 days of the marriage, she in connivance with co-accused Abdul Manan hatched a conspiracy in order to get rid of her husband, wherein she played an active role. According to the disclosure made by her, she was given 300 US Dollar by her husband since deceased after her marriage as gift "Munh Dikhai", out of which she had given some amount to co-accused Abdul Manan for the purchase of pistol "crime weapon" in order to fulfill her evil design. In addition, she treachery made her husband "deceased" to travel along with her to the place of incidence i.e. Pathar Point where she met with co-accused Abdul Manan, as per plan, for the murder of her husband which she ultimately got executed.

9- The disclosure by the respondent No.2 is further supported by the disclosure made by co-accused Abdul Manan before the Investigating Officer. In furtherance of disclosure, co-accused got recovered three gold rings belonging to respondent No. 2 on his pointation. In addition, co-accused also got recovered crime weapon "pistol" which, as per the report of N.F.S.A matched with the empties collected from the crime scene.

10- On tentative examination of the record, it is noticed that pursuant to disclosure made by respondent No. 2 wherein she had provided all the details of the occurrence, police arrested co-accused who then got recovered three gold rings besides pistol, motorbike and also pointed the place where he along with respondent No. 2 had thrown the purse of the deceased and the other weapon of offence i.e. danda. The disclosure attributed to respondent No.2 is not a simple disclosure, but her disclosure ostensibly falls within the ambit of Article 40 of the Qanoon-e-Shahadat Order, 1984, "**Order 1984**" which is an exception to

Article 37, 38, and 39 of the Order 1984 wherein confession before police is inadmissible.

11- While forming this opinion, guidance is solicited from the dictum laid down by the Hon'ble Apex Court in the case of ***"Mst. Askar Jan & other v. Muhammad Daud and others"*** **(2010 SCMR 1604)**. It had graciously been held in paragraph 9 that:-

> *"9. Having heard the learned counsel for the parties, learned Deputy Prosecutor-General and perusing the record of the case with their assistance, we find that the appellant Muhammad Daud was convicted by the High Court on the evidence of discovery of dead body and blood stained bailchas on his information.* ***The discovery of any fact on the-information of the accused in custody of Police is admissible under Article 40 of Qanun-e-Shahadat Order, 1984*** *(hereinafter referred to as 'the Order'), which reads as under:-*
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> > *"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

12. The wisdom guides to observe that if the statement of an accused before the police is supported by the discovery of a new fact it may be presumed to be true and not to have been extracted. There should be information or statement of the accused before the police and on the basis of said information or disclosure, a new fact is discovered.

13- The events, allegedly happened subsequent to the disclosure do form part of chain of events and thus lend support to the disclosure made by the respondent No. 2 before the police. The prosecution, prima facie, had been able to bring on record sufficient incriminating material to substantiate the fact that the information conveyed by the respondent No. 2 to the police actually led to the discovery of the new fact, and, that the fact was also unknown and exclusively derived from her statement, and

that discovery of the fact, on the face of it, relates to the commission of the alleged offence, therefore, it cannot be said that the prosecution case lacks incriminating material to the extent of respondent No.2, who apparently kindled the occurrence while co-accused Abdul Manan appears to be a catalyst. The respondent No. 2 with connivance of co-accused Abdul Manan planned the murder of deceased/husband of respondent No. 2, prepared for the same and executed it.

14- All the material aspects highlighted above were not appreciated by the learned Trial Court while extending concession of post arrest bail to respondent No. 2 particularly when the challan has already been submitted and trial is likely to commence. The alleged offence not only falls within the ambit of prohibitory clause of Section 497 Cr.P.C but also entails capital punishment. The order impugned, on the face of it is short of reasons and rational with the facts of the case.

15- 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."

16- 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. 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).***

17- Although under the principle, there is no hard and fast rule to give exhaustive reasoning, while deciding a bail matter as only tentative assessment is to be made but it does not mean that the bail order is made in a slipshod manner without appreciating

material facts. Such type of dispensation, in no way, can be termed justified, well-reasoned and in accordance with the principle of natural justice. It also does not qualify status of a well-reasoned order, being devoid of reasons, rational with the facts of the case.

18- In presence of above sufficient incriminating material coupled with the fact that no ill will and *malafide* on the part of the complainant or the police has been alleged, the exercise of discretion in the present circumstances of the case, is unjust, arbitrary and is result of miscarriage of justice.

19- In view of above, impugned order dated 19.03.2022 is not legally sustainable, it is accordingly set-aside and the post-arrest bail granted to respondent No.2 by the learned Additional Sessions Judge, Islamabad (West) is recalled.

20- The instant criminal miscellaneous petition is **allowed** in the above terms.

21- The observations made herein above are tentative in nature and shall have no impact upon case of either side.

(ARBAB MUHAMAMD TAHIR)
JUDGE

A.R. Ansari

APPROVED FOR REPORTING