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

Criminal Misc. No. 718-BC/2022

Niaz Ali Khan

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.06.2022	Mr. Ajmal Khan Khattak Advocate for the petiotner. Malik Zahoor Ahmed, Advocate for respondent No. 2. Mr. Hazrat Younas, State Counsel with Abrar, 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 13.04.2022, passed by the learned Additional Sessions Judge, Islamabad-West whereby respondent No. 2 was allowed pre-arrest bail in FIR No. 273, dated 17.02.2022, under Section 324/34 PPC, Police Station Sabzi Mandi, Islamabad.

2. According to the allegations set-forth in the FIR, on 17.02.2022, respondent No. 2 along-with co-accused Ehsan Ullah Khan launched an attack upon the complainant. Co-accused allegedly fired at the complainant that landed on his right foot while no overt act was attributed to respondent No. 2.

3. Learned counsel for the petitioner stated that bail granting order is illegal arbitrary and the same is devoid of proper and judicious application of mind; that the trial court while passing the impugned order did not appreciate the evidence and material available on record; that the learned Lower Court had ignored the criminal record of the respondents; that the Lower Court passed the bail granting order in a slipshod manner and the order is based on

wrongful exercise of discretion and jurisdiction, also adverse to the principals of law as laid down by the Hon'ble Apex Court; that sufficient incriminating material is available on record against the respondent No. 2 which connects him with the commission of alleged offence, therefore, impugned order is liable to be set aside.

4. On the other hand, learned counsel for respondent no. 2 repelled the above submissions by contending that no overt act is attributed to said respondent while nothing is to be recovered from his possession and that his false application in the attending circumstances cannot be ruled out therefore, petition is liable to be dismissed.

5. Heard, record perused.

6. Record reveals that the complainant though named the respondent No. 2 in the complaint yet the fact remains that no overt act is attributed to said respondent. Neither he was allegedly armed with any weapon nor any other active role was attributed to him. Nothing is to be recovered from his possession while it is also a matter of record that he sustained injuries and a cross version also exists.

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 has reiterated the principles governing cancellation 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."

8. 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.

9. 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).***

10. 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//