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

Crl. Misc. No. 822-BC of 2023

Khalid

Versus

The State, etc.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3
	17.02.2025:	Syed Muhammad Ali Rizvi, Advocate for the petitioner. Ms. Farzana Faisal Khan, Advocate for respondents. Mr. Kashif Hussain Shah, Special Public Prosecutor. Mr. Muhammad Saleem, ASI/IO, P.S. Sangjani, Islamabad.

MUHAMMAD ASIF, J: Through the listed criminal miscellaneous, in terms of Section 497(v) of Cr.P.C the petitioner (complainant) namely *Khalid* impugns order dated 19.05.2023, passed by the learned Additional Sessions Judge, Islamabad (West) whereby respondents No. 2 to 6 namely *Tauseef Khan, Shahzad Khan, Shuakat Khan, Kanwal Bibi and Saqlain Khan were* allowed pre-arrest bail in FIR No. 248, dated 02.04.2023, under Section 324, 109, 34 PPC, Police Station Sangjani, Islamabad. Operative paragraphs 5 and 8 of the impugned order, being relevant are reproduced:-

> "5, Perusal of the record reveals that though the accused/petitioners are nominated in the FIR which are non bailable offences, however, previous enmity between the parties in the shape of family/civil as well as criminal cases exists and are pending before the

competent courts. The record also reflects that the complainant party had lodged an FIR against the accused/petitioners party and one of the accused being complainant party had not been granted bail till the Hon'ble Supreme Court vide its order 31.02.2023 hence false implication of the present accused/petitioners cannot be ruled out under the circumstances.

8. Necessary investigation from the accused/petitioners is almost complete. Intended arrest of accused/petitioners in circumstances would not service any purpose or advance the case of the prosecution, except the humiliation and harassment of the petitioners at the hands of the police.

2. The subject FIR stood registered on the complaint of the petitioner/complainant, wherein it was alleged that on 02.04.2023 at about 12:00 am accused persons namely Shahzad, Tauseef and Kanwal came to the house of the petitioner and beat the petitioner's daughter namely Afshan (victim) and forcibly abducted her which resulted a fire shot on her right leg by accused Tauseef.

3. Learned counsel for the petitioner argued that the injured specifically nominated the accused persons/respondents, but the learned trail court has not appreciated this aspect of the matter and confirmed their pre-arrest bail. The medical evidence also supports the case of the petitioner but the learned trial court passed the order in hasty manner. The learned trial wrongly interpreted that in support of their plea of albi, accused persons produced some certified copies, however, no such copies were ever made part of the investigation nor were investigated by the Investigation Officer. The offences fall within the ambit of prohibitory clause and are non bailable, therefore, bail granting order dated 19.05.2023 may kindly be recalled in the interest of justice.

4. On the other hand, learned counsel for respondents assisted by the State Counsel opposed the above submissions by contending that pre-requisite to the extent of extra ordinary relief to respondents and there is no illegality or irregularity in the order Impugned passed by the learned trial Court. The case was registered solely on the basis of complaint filed by the petitioner; and there exists no ground for the cancellation of bail, therefore, petition is liable to be dismissed.

5. Heard, record perused.

6. Perusal of the record reveals that the instant petition has been filed on the ground that the impugned order is not tenable and against the facts of the case, where evidence available on record was not appreciated by the learned trail Court, however, there is no material available on record, which prima facie proves the case of the petitioner. As per CDR, most of the accused persons/respondents were not present in Islamabad at the time of incident except the accused Mst. Kanwal Bibi and Tauseef. Record further shows that previous litigation between the parties also exists.

7. Investigation of the case has been completed and challan/report under Section 173 Cr.P.C. has also been submitted before the Court, therefore, In absence of incriminating material, implication of respondents merely on the basis of nomination in the FIR would not suffice to hold the respondents to disentitle them to extra ordinary relief and the grant of bail is a rule and refusal is an exception in the same manner as it is granted or

refused in offences that do not fall within the prohibitory clause of Section 497(1) Cr.P.C.

8. The Supreme Court of Pakistan in the case of "*Sami Ullah and another v. Laiq Zada and other"* (**2022 SCMR 1115**) reiterated the principles for cancellation of bail which are (i) *If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice,* (ii) *accused has misused the concession of bail in any manner,* (iii) *accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses,* (iv) *there is likelihood of absconsion of the accused beyond the jurisdiction of Court,* (v) *accused has attempted to interfere with the smooth course of investigation,* (vi) *accused misused his liberty while indulging into similar offence* and that, (vii) *some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused*.

9. Furthermore, the superior courts are cautious to interfere into the order extending concession of bail rather shown unwillingness to interfere in such like matters. Reliance is placed upon case of *Shahid Arshad v. Muhammad Naqi Butt and 02 others* (**1976 SCMR 360**) wherein it was held that *"In these circumstances although we are not happy about the order passed by the learned Single Judge of the High Court, we do not think it advisable to interfere with his order at this stage. If at any time any one of the said two respondents misuses the privilege of bail it will be open to the petitioner to approach the High Court for cancellation of bail."*

10. The principles on the subject, guides to observe that once concession of bail is granted by a court of competent jurisdiction

then very strong and exceptional grounds would be required to hamper with the concession extended to an accused who is otherwise clothed with free life, as a consequent of concession and if any other view is taken by the court, it would be synonymous to curtailing the liberty of said accused prior to completion of trial, which otherwise is a precious right guaranteed under the Constitution of the country.

11. In the present case, petitioner has not pressed any ground i.e. (i) *accused has misused the concession of bail in any manner*, (ii) *accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses*, (iii) *there is likelihood of absconsion of the accused beyond the jurisdiction of Court*, (iv) *accused has attempted to interfere with the smooth course of investigation*, (v) *accused misused his liberty while indulging into similar offence*, and that, (vi) *some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused.*

12. In view of above, impugned order appears to be in accordance with law and facts of the case, therefore, does not call for any interference. Consequently, instant bail cancellation petition is **dismissed.**

(MUHAMMAD ASIF)
JUDGE

//*Kamran***//****

ISLAMABAD │ 02.2025
APPROVED FOR REPORTING
BLUE SLIP ADDED