JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Revision No.9 of 2025

HAZRAT UMAR
Vs.
THE STATE AND ANOTHER

Petitioner by:	Ch. Jamshed and Ch. Abdul Ghafoor Qammar, Advocates.
Respondent No.1/State by:	Rana Ali Raza, State Counsel.
Respondent No.2 by:	Mr. Waqas Ali, Advocate.
	Waqar Ahmad S.I and Ali Muhammad S.I with record.
Date of Decision:	**18.02.2025.**

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INAAM AMIN MINHAS, J:- Through the listed revision petition in terms of section 435 read with section 439 Cr.P.C, the petitioner assails order dated 05.12.2024**("Impugned Order")**, passed by learned Additional Sessions Judge, Islamabad (West), whereby petition for cancellation of bail filed by Muhammad Daniyal (respondent No.2) was accepted and bail granted to the petitioner vide order dated 03.10.2024 in case FIR No.496, dated 28.07.2023, under sections 420, 468, 471, 381 & 34, PPC, P.S. Tarnol, Islamabad was recalled with following observations:-

> *"As per record, this offence under Section 467 PPC was added on 25.09.2024 whereas bail was granted on 03.10.2024. Offence under Section 467 entails maximum punishment as imprisonment for life which falls within prohibitory clause of Section 497 Cr.P.C, so findings of learned Magistrate that offence does not fall within prohibitory clause of Section 497 Cr.P.C is incorrect."*

2. Brief facts are that co-accused of the petitioner namely Khurram Shehzad was an employ of respondent No.2, when he was terminated by respondent No.2 from his office, he stole Letterhead Pad, Stamps, Original Card and file of respondent No.2's car and prepared some forged documents on his Letterhead Pad and transferred the ownership of respondent No.2's car by using forged documents in his name. The petitioner submitted the same forged documents along with an application against respondent No.2 to the SHO P.S. Tarnol and the FIR was registered against respondent No.2. After that respondent No.2 moved his bail before arrest and during pendency of bail, police sent the said documents to National Forensic Science Agency for forensic. In first instance, FIR under section 406 PPC was registered against respondent No.2. After receiving of forensic report by the police, it appeared that the documents are fake and not the real and that respondent No.2 is not the author of that forged documents; that after forensic report, police deleted section 406 PPC against respondent No.2 and added sections 381, 420, 468, 471 & 34 PPC against the petitioner and co-accused. Co-accused of the petitioner was granted post arrest bail on 16.02.2024 by learned Judicial Magistrate. The petitioner was arrested on 20.09.2024 and remained on physical remand for five days and sent to judicial lock up on 25.09.2024. The petitioner filed his post arrest bail petition before learned Judicial Magistrate, which was allowed vide order dated 03.10.2024. Thereafter on 09.10.2024 respondent No.2 filed petition u/s 497(5), Cr.P.C before learned Additional Sessions Judge for cancellation of post arrest bail granted to

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the petitioner, which was allowed through the Impugned Order, hence, this petition.

3. Learned counsel for the petitioner contended that the petitioner lodged an FIR No.496, dated 28.07.2023, under section 406 PPC, at P.S. Tarnol, Islamabad against respondent No.2 and later on with *malafide* intention on the part of the police and respondent No.2, the FIR was converted against the petitioner by deleting section 406 PPC and adding sections 420, 468, 471, 381, 34 PPC. Learned counsel further contended that these sections were mentioned in the applications for obtaining remand/*Parcha* remands dated 23.09.2024 and 25.09.2024; that the petitioner moved post-arrest bail in the above said offences, which was granted by learned Judicial Magistrate, vide order dated 03.10 2024 and thereafter a petition for cancellation of bail was filed only on the ground that offence under section 467, PPC falls within ambit of prohibitory clause of section 497, Cr.P.C, which fact was not considered by learned Judicial Magistrate while granting bail to the petitioner; that the I.O in connivance with respondent No.2 added sections 467 and 201, PPC after passing of bail granting order; that Impugned Order is not in consonance with the principles and law laid down by the Honourable Superior Courts in respect of cancellation of bail.

4. On the other hand, learned State Counsel assisted by learned counsel for respondent No.2 fully supported the Impugned Order and argued that section 467 PPC was added before decision of the bail petition on 25.09.2024, vide Diary No.32, which escaped notice of

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learned Judicial Magistrate while deciding the bail petition; that Impugned Order has been passed in accordance with law.

5. I have heard learned counsel for the parties and perused the record.

6. Perusal of the record reveals that FIR No. 496, dated 28.07.2023, was registered under sections 420, 468, 471, 381, and 34 PPC at Police Station Tarnol, Islamabad. The petitioner and co-accused namely Khurram Shahzad were nominated therein. Co-accused of the petitioner was granted post arrest bail on 16.02.2024. The petitioner was arrested on 20.09.2024 and remained on physical remand for five days till 25.09.2024 and thereafter was granted post-arrest bail by learned Judicial Magistrate on 03.10.2024 following the principle of consistency.

7. The record further reveals that upon the petitioner's arrest, the I.O submitted applications for obtaining physical remand on 23.09.2024 and 25.09.2024 before learned Judicial Magistrate for and in these applications the I.O. only cited sections 420, 468, 471, 381, 411, and 34, PPC but did not mention sections 467 and 201, PPC.

8. Subsequently, the petitioner applied for post-arrest bail based on the remand applications, which listed the same sections. Considering this fact, learned Judicial Magistrate granted bail to the petitioner.

9. On 09.10.2024, respondent No.1 filed a petition under section 497(5), Cr.P.C seeking cancellation of bail. Notably, this was the first instance where respondent No.2 introduced section 467 PPC in his petition. However, the case record clearly indicates that at the time of

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the bail granting order dated 03.10.2024, the attendance of learned counsel for the parties, learned State Counsel and the I.O was duly marked before learned Judicial Magistrate. Despite this, neither learned counsel for respondent No.2, learned State Counsel nor the Investigating Officer disclosed the inclusion of section 467, PPC in the FIR. This omission raises serious concerns regarding *malafide* intent on the part of the prosecution.

10. The Hon'ble Supreme Court of Pakistan in ***Muhammad Tanveer v. The State*** **(PLD 2017 SC 733)** emphasized that bail cannot be cancelled on the grounds that were not initially raised before Trial Court, particularly when the prosecution's conduct indicates *malafide* intent. Applying this principle, the suppression of material facts by the prosecution further strengthens the petitioner's case and justifies the grant of bail.

11. It is evident from the record that the State did not file an application seeking cancellation of bail granted order dated 03.10.2024 instead, only respondent No.2 initiated such proceedings.

12. It is well established by now that there is a fundamental distinction between the grant of bail and its cancellation. In the case Muhammad Tanveer *Supra* the Honourable Supreme Court also held that once bail has been granted, it should not be cancelled unless there are exceptional circumstances, such as misuse of concession, interference with the investigation, or commission of a subsequent offence. Mere dissatisfaction of the complainant is not a valid ground for bail cancellation.

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13. For cancellation of bail following guidelines have been laid down by the Honourable Supreme Court of Pakistan in ***Saeed Ullah and 2 others vs. The State and another*, (2023 SCMR 1397)** and ***Muzafar Iqbal vs. Muhammad Imran Aziz and others*, (2004 SCMR 231)**:-

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 a manner

iii. That accused has tried to hamper prosecution evidence persuading/ pressurizing prosecution witnesses.

iv. That there is the 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.

14. Apart from the aforementioned principles governing the cancellation of bail, no other ground can be taken into consideration for cancellation of bail. In the present case, respondent No.2 with *malafide* intention relied on the addition of a new section to invoke the prohibitory clause as a ground for canceling of bail, which is against the settled principles for cancellation of bail reproduced in the preceding paragraph.

15. Deletion or substitution of relevant section of PPC through Diary Numbers (Zaminies) by the I.O does not control the judicial discretion

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of Court exercised under section 497(2), Cr.P.C in cases of bail, the facts of the FIR or complaints are to be seen by the Court while granting bail and the bail is granted in its entirety, therefore, after granting the bail, the I.O cannot undermine the order passed by the Court in bail petitions by way of addition or deletion of the sections in FIR.

16. Moreover, mere addition of a new section after the grant of bail cannot, by itself, be a valid reason for its cancellation. The Courts have consistently emphasized that bail once granted should not be withdrawn unless there is clear evidence of misuse, obstruction of justice, or violation of bail conditions by the accused. Therefore, any subsequent changes or additions in the FIR do not automatically invalidate the bail order unless misuse of concession, obstruction of justice, or other compelling reasons are established. In the present case none of the grounds as mentioned above were available to learned Additional Sessions Judge for recalling of the order dated 03.10.2024.

17. Investigation of the case had already been finalized and physical custody of the petitioner was no more required for the purposes of investigation, therefore, learned Additional Sessions Judge could not have recalled the bail granting order passed by learned Judicial Magistrate. No illegality or perversity has been found in the bail granting order. Reliance is placed upon ***The State vs. Muhammad Sarwar and others*** **(2017 SCMR 1993).**

18. In view of the above discussion, the instant revision petition is accepted. Resultantly, the Impugned Order dated 05.12.2024, for

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recalling of bail order dated 03.10.2024, passed by learned Additional Sessions Judge, Islamabad (West) is hereby set aside.

(INAAM AMIN MINHAS)
JUDGE

APPROVED FOR REPORTING.

R.Anjam

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