ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.1390-CB of 2026

Akhtar Nawaz
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.
	12.10.2026	**Mr. Muhammad Usman, Advocate for the petitioner.** **Mr. Adnan Ali DDPP for the State with M. Amjad ASI.**

Through this petition under Section 497(5) of Cr.P.C., the petitioner seeks cancellation of pre-arrest bail granted to respondent No.2 by the learned Additional Sessions Judge West-Islamabad vide order dated 24.06.2026 in case FIR No.286 dated 18.04.2026 under Sections 406/34 PPC registered at Police Station Shalimar Islamabad.

2. Precisely, the allegation against the accused/respondent No.2, as set out in the contents of the FIR, is that he dishonestly misappropriated an amount of Rs.20,000,000/- (Rupees twenty million) entrusted to him by the complainant for the purpose of obtaining a permit for white spirit. It is alleged that respondent No.2 neither procured the requisite permit from the concerned quarter nor returned the amount to the complainant. The FIR further alleges that respondent No.2, in connivance with his co-accused, committed criminal breach of trust in respect of the aforesaid amount.

3. Learned counsel for the petitioner contends that respondent No. 2 was granted pre-arrest bail vide order dated 24.06.2026, on the basis of compromise having become affected between the parties. The said order was subsequently challenged by the petitioner through an application seeking cancellation of the said bail, however, the learned Additional Sessions Judge, Islamabad (West), vide order dated 17.09.2026, dismissed the application for cancellation of bail without properly appreciating the factual position and the circumstances surrounding the compromise allegedly effected between the parties. It is,

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therefore, prayed that the instant petition be allowed, the impugned order dated 17.09.2026 be set aside, and the pre-arrest bail granted to respondent No. 2 vide order dated 24.06.2026 be cancelled.

4. Heard, record perused.

5. It is well settled by now that the principles governing cancellation of bail under section 497(5) Cr.P.C., are completely different from those for grant of bail. Ordinarily, the superior courts were reluctant to interfere with an order extending concession of bail unless very strong and exceptional grounds exist to interfere with such concession extended to a person who was otherwise clothed with freedom and any action of the court contrary to the above, would amount to curtailing the liberty of such person, which is a precious right guaranteed under the Constitution[1]. A quick study of the case law on the subject by the Supreme Court lays down the following position:

> **(a)** that Bail is to be cancelled only if the bail granting order is *patently perverse* and is passed in violation of principles for grant of bail. The rule is settled, *that mere possibility of an alternate view is not sufficient to recall bail*[2].
>
> **(b)** that even if another opinion of the matter can be formed in comparison to the bail granting opinion, the same would not be a sufficient ground to cancel the bail, if in the light of the facts of the case it can be found to have qualified the test of calling further inquiry into the guilt of an accused in terms of subsection (2) of section 497, Cr.P.C[3].
>
> **(c)** That in Samiullah's case ibid, at least few guidelines have been spelled out for cancellation of bail, being:
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> > *(i) that the bail granting Order has to be so patently illegal, erroneous, factually incorrect, that it resulted in miscarriage of justice;*
> > *(ii) the accused had misused the concession of bail in any manner;*
> > *(iii) the accused had attempted to hamper prosecution evidence by*

[1] 'Sami Ullah and another v. Laiq Zada and another' (2020 SCMR 1115); 'Tariq Bashir and 5 others v. The State' (PLD 1995 SC 34); 'Shahid Arshad v. Muhammad Naqi Butt and 2 others' (1976 SCMR 360).

[2] Munir Ahmad v. The State and another' (2014 SCMR 1669); 'Suba Khan v. Muhammad Ajmal and 2 others' (2006 SCMR 66).

[3] 'Suba Khan v. Muhammad Ajmal and 2 others' (2006 SCMR 66).

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> *persuading/ pressurizing prosecution witnesses;*
> *(iv) there was likelihood of abscondment of the accused beyond the jurisdiction of the Court;*
> *(v) the accused had attempted to interfere with the smooth course of investigation;*
> *(vi) the accused misused his liberty while indulging into a similar offence; or*
> *(vii) some fresh facts and material had been collected during the course of investigation, establishing guilt of the accused*[4].

> (d) It was further held that even where material available on the record did not support a finding of misuse of concession of bail by the accused in any manner, the court could decline cancellation of bail, even if it was satisfied that the bail granting order passed by the court below was not sustainable in the eyes of law. In case any material came on record qua misuse of privilege of bail was subsequently discovered, the matter could be remanded to the Court below[5].

6. The principal question requiring determination is whether the failure of an accused to fulfill the terms and conditions of a compromise, on the basis of which his pre-arrest bail was confirmed, by itself constitutes a sufficient ground for cancellation of bail under Section 497(5), Cr.P.C. This question must be examined in the light of the statutory framework governing bail, the settled principles regulating its cancellation, and the distinction between the enforcement of a private settlement and the exercise of judicial discretion in criminal proceedings.

7. It is undisputed fact that the pre-arrest bail of the respondent No.2 was confirmed on the basis of compromise. A thorough perusal of the compromise deed (Mark-A) reveals that no time limit for the fulfillment of promiser was fixed, therefore, it cannot be held that the accused resumed his promise. Nothing is there to suggest the misuse of the concession of bail or tampering with the evidence and investigation process.

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[4] 'Sami Ullah and another v. Laiq Zada and another' (2020 SCMR 1115)

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8. The stipulation of the cancellation of bail in the compromise deed (Mark-A) and the consent of parties cannot override the law. Provisions of section 497(5), Cr.P.C. cannot be made subservient to the consent of complainant. Prerogative of the Court to cancel the bail cannot be shifted to complainant on the basis of mutual agreement between parties. Grant of bail on the basis of condition cannot be sustained as principles for the grant of bail and cancellation thereof are altogether different[6]. Moreover it cannot be left to the sweet will, discretion and prerogative of the complainant that he may at a certain point of time make a request before a Court of law for his no objection over the release of an accused on bail and still at another time of his own choice may make a request to recall the bail order. The process of law cannot be made subservient to the will of an individual.

9. This Court is also fortified by the dictum laid down by the Hon'ble apex Court in the case reported as, *Muhammad Tanveer v. The State and another* **(PLD 2017 Supreme Court 733)**, wherein it was held as follows:

> *"11. It is settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in particular category of offences without placing any prohibition on such discretion then, the Court shall not import to the provision of law, reasons or factors alien thereto and not specifically mentioned in the Statute.*
> *12. - - - -*
> *13. Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be a exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts."*

10. This approach is also consistent with the principles reiterated by the hon'ble Supreme Court in "*Sidra Abbas vs. The*

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[5] Ibid.
[6] Haji Hukmat Khan v. The State and another" (*2012 PCr.LJ 1018*)

State and another" **(2020 SCMR 2089),** concerning the distinct tests for cancellation of bail and the limited circumstances in which an order granting bail may be interfered with.

11. For what has been discussed above, learned counsel for the petitioner failed to demonstrate that the bail granting order is patently illegal erroneous, factually incorrect and has resulted in miscarriage of justice. No reasonable ground exists for the cancellation of bail granted to the respondent No.2. Consequently, the instant application is **dismissed**.

(CHIEF JUSTICE)

ARSHAH"

APPROVED FOR REPORTING

(CHIEF JUSTICE)

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