

**ORDER SHEET**

**LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Crl. Misc. No.60014/CB/2022**

Azeem-ud-Din

Vs

Feroze Khan etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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20.1.2023      Sheikh Irfan Akram and Mr. Saim Raza, Advocates, for the Petitioner.  
 Mr. Muhammad Mustafa Chaudhry, Deputy Prosecutor General, with Ibrar/ASI.  
 M/s Zafar Abbas Khan and Ghulam Murtaza Chaudhry, Advocates, for Respondent No.1.

**Tariq Saleem Sheikh, J.** – Muhammad Iqbal lodged FIR No.333/2021 dated 20.8.2021 against Respondent No.1 at Police Station City, Bhakkar, for an offence under section 489-F PPC claiming that Respondent No.1 borrowed Rs.1,800,000/- from him on 15.2.2021. Later, he gave him Cheque No.01044063 drawn on United Bank Limited, Bhakkar, for repayment of that loan which was dishonoured upon presentation. Respondent No.1 petitioned for pre-arrest bail in the Sessions Court but it was denied. Then he filed Crl. Misc. No.64987-B/2021 in this Court for the same relief. Muhammad Iqbal and Respondent No.1 entered into a settlement during the pendency of that application. On 15.3.2022, Muhammad Iqbal submitted his affidavit in this Court stating the terms of compromise, which was placed on record as Mark-A. Respondent No.1 duly acknowledged it. Thereupon, by order of even date, this Court granted his plea and admitted him to pre-arrest bail.

2.      On 3.9.2022, Muhammad Iqbal died. His son, Azeem-ud-Din (hereinafter referred to as the “Petitioner”), has filed the present application under section 497(5) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the “Code” or “Cr.P.C.”), for cancellation of the bail of Respondent No.1. He contends that he has

failed to abide by the terms of the compromise and fulfill his commitments. According to him, on 15.3.2022 (the settlement date), he made partial payment in cash and undertook to pay the remaining sum of Rs.1,400,000/- within six months, but he has defaulted. The Petitioner argues that the bail of Respondent No.1 was conditional so it is liable to be recalled.

3. This Court issued notice to Respondent No.1 who has made an appearance with his counsel. He does not deny violating the terms of his settlement with Muhammad Iqbal by failing to pay the remaining sum of Rs.14,00,000/- within the agreed period of six months. He has rather objected to the maintainability of this application. He contends that the Petitioner lacks *locus standi* to file it because he is not the complainant of FIR No.333/2021 and was not a party to the settlement dated 15.3.2022.

4. The learned Deputy Prosecutor General has supported this application.

5. Arguments heard. Record perused.

6. Chapter XXXIX of the Code sets out the law relating to bail. Section 497(5) provides for the cancellation of bail. It reads as under:

(5) A High Court or Court of Sessions and, in the case of a person released by itself, any other court may cause any person who has been released under this section to be arrested and may commit him to custody.

7. The Code does not prescribe any procedure for applying for cancellation of bail. Therefore, in *The State/Anti-Narcotics Force v. Malik Amir* (2005 YLR 1411), a Division Bench of this Court observed that the power conferred by section 497(5) was akin to revisionary powers under sections 435 and 439 Cr.P.C. The relevant excerpt is reproduced below:

“Since no specific manner/procedure for filing of a petition for cancellation of bail has been prescribed either in Control of Narcotic Substances Act, 1997 or in the Criminal Procedure Code 1898 and its section 497(5) conferred unrestricted powers on this Court and the Court of Session in case of a person released by itself or by any other Court, for his arrest for committing to custody. We are of the view that invocation of this jurisdiction can

be made on an application of any concerned person and, in the absence of any such application, by the court itself, whenever any lapse, capriciousness, or arbitrariness amenable to its jurisdiction comes to its notice. Powers of cancelling bail under sub-section (5) of section 497 Cr.P.C. can in no manner be restricted for any specific class of persons because such intention of the legislature does not flow out of those provisions. These powers are also similar to the revisional powers for which, as well, right of invocation is also not restricted.”

Lately, ***Zafar Ali Shah v. Zakir Hussain and another*** (2018 YLR Note 124) has expressed the same view.

8. I may also refer to two earlier cases. In ***Zahir Ahmad Suri v. Wazir Ahmad Chughtai*** (1969 PCr.LJ 1161), the High Court found that the applicant seeking bail cancellation was neither a prosecution witness nor a relative of the murdered man. It ruled that he had no *locus standi* to pursue the application and, therefore, asked him to retire. However, it continued the proceedings on the ground that the court is competent to revoke bail under section 497(5) Cr.P.C., even in the absence of any party’s application, when a perverse order comes to its notice. In ***Nazir Ahmad v. Latif Hussain and others*** (PLD 1974 Lahore 476), a learned Single Judge held that the High Court could exercise its revisional jurisdiction under section 439 Cr.P.C. and set aside an order of a magistrate or a Sessions Judge granting bail to an accused if it is perverse.

9. The question as to who can make an application for cancellation of bail of an accused has been considered in several cases. In ***Nazir Ahmad***, supra, this Court held that in cognizable cases, the Public Prosecutor must be vigilant and petition for bail cancellation if he thinks the order is erroneous and unsustainable. However, section 497(5) Cr.P.C. does not explicitly state that only an interested person can move the court for cancellation of bail. In ***Nazir Ahmad***, the High Court entertained the application because the applicant, in addition to being a witness of the alleged motive, was the husband of the woman who was assaulted and dishonoured. The High Court held that he was “a person vitally interested in the case.” In ***Khalid Mahmood v. Abdul Qadir Shah and others*** (1994 PCr.LJ 1784), this Court ruled that a private person who has a legitimate

interest in the prosecution, such as the complainant or a close relative of the deceased or an injured person, may apply for cancellation of bail granted to an accused person. The learned Judge observed that being the “real aggrieved persons” they cannot be barred from seeking redress in a court of law. This is also necessary because the State frequently exhibits passivity in bail cancellation.

10. In *Saleem Akram v. Muhammad Zakir Khan Changezi and another* (1979 PCr.LJ 972), the Sindh High Court cancelled the bail of an accused at the instance of the person injured in the incident. The learned Judge held that the State should have ordinarily moved for cancellation where the bail-granting order is perverse. However, in a proper case, an aggrieved private party should be allowed to have recourse to the law. In *Dur Muhammad v. Bashir and others* (1983 PCr.LJ 2053), the Sindh High Court ruled that a person allegedly injured in the occurrence, even if he is not the complainant, is vitally interested in the case. Hence, he is entitled to apply under section 497(5) Cr.P.C. for cancellation of the bail of the accused. The Hon’ble Judge dissented from the view taken in an earlier case, *Nazar Muhammad v. The State and another* (1977 PCr.LJ 277), in which another Bench of the same Court accepted the revision petition of the accused whose bail had been cancelled by the Additional Sessions Judge at the instance of a person allegedly injured in the occurrence. In doing so, the Bench had observed that the provision regarding cancellation of bail could not be made available to private parties to satisfy their grudges or use it as a means of exacting vengeance. *Dur Muhammad* was followed in *Shaista Qaiser v. Mir Hassan alias Miro and others* (2004 MLD 420).

11. In *Haji Behram Khan v. Akhtar Muhammad and others* (1993 PCr.LJ 71), the Balochistan High Court distinguished *Nazar Muhammad*, supra, decided by the Sindh High Court, holding that it only discouraged frivolous applications for cancellation of bail. It ruled:

“It appears that the learned trial court has misconstrued the import of the above report. Factually it aims at restricting and discouraging the tendency of misconceived applications of private

persons which may be motivated by the *mala fide* desire of merely satisfying grudges, vindicating their vengeance, or causing harassment to the accused person. It may further be noticed that plain reading of section 497(5) Cr.P.C. concerning cancellation of bail, as well as revisional jurisdiction conferred upon the courts under Cr.P.C. does not place any embargo on the private persons in pointing out grave improprieties committed by a subordinate court. Therefore, any person primarily interested in prosecuting a case against the accused cannot be restrained from knocking on the door of justice. It cannot be overlooked that public prosecutors, at times, show indifference to challenge a decision that may otherwise be defective. Therefore, outright exclusion of the aggrieved person from approaching the court of law in pointing out gross illegalities, misuse of powers or arbitrary assumption of jurisdiction by the trial court can be detrimental to the effective administration of justice.”

12. Analysis of the above case-law shows that it is the State’s primary duty to ensure justice is done to the parties even during the bail process. No accused should be released on bail unless legally entitled to it. The Prosecution Department should immediately seek a correction under section 497(5) Cr.P.C. where the court has wrongly granted bail to an offender. Additionally, any individual who is vitally interested in the case and concerned with its outcome has a right to contest such an order. The court may also intervene on its own initiative if any lapse, capriciousness, arbitrariness, or perversity comes to notice. Section 497(5) Cr.P.C. confers powers similar to revisional powers under sections 435 and 436 Cr.P.C. on the High Court and the Court of Sessions.

13. In the present case, the Petitioner’s father, Muhammad Iqbal, lodged FIR No.333/2021 dated 20.8.2021 against Respondent No.1 for the dishonour of the cheque. Now that Iqbal has died, the Petitioner is an interested party and competent to apply under section 497(5) Cr.P.C. In the circumstances, the objection of Respondent No.1 regarding the maintainability of this application is overruled.

14. Let’s now turn to the merits. This Court granted pre-arrest bail to Respondent No.1 in Crl. Misc. No. 64987/B/2021 vide order dated 15.3.2022 pursuant to his compromise with Iqbal. He paid a part of the outstanding amount in cash and undertook to pay the remaining Rs.1,400,000/- within six months but has defaulted. Since

the bail of Respondent No.1 was conditional and subject to the due performance of his obligations, it must be recalled.

15. In view of the above, this application is accepted, and the pre-arrest bail granted to Respondent No.1 is cancelled.

16. Above are the reasons for my short order of even date.

**(Tariq Saleem Sheikh)**  
Judge

*Naeem*

Approved for reporting

Judge