

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Crl. Misc. No. 2163-B of 2023

Muhammad Moosa

VS

The State and another

Sr. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
---------------------------------	------------------------------	--

16-06-2023 Malik M. Javed Iqbal Rid, Advocate with the petitioner.
Mr. Zafar Iqbal Somro, Assistant District Public Prosecutor with Muhammad Jameel, ASI.

By virtue of instant petition filed under Section 498 Cr.P.C., petitioner Muhammad Moosa has sought pre-arrest bail in case FIR No. 387/2018 dated 20.11.2018, in respect of offences under Sections 447, 511, 506-B, 148, 149, PPC registered at Police Station Shedani Sharif, District Rahimyar Khan.

2. Tersely, the facts of the case culled from the contents of first information report are that complainant was resident of *mauza Ghaus Abad* and cultivator by profession. On 12.11.2018 at 08.00/09.00 p.m. the complainant received phone call that the petitioner and his co-accused while armed with weapons tried to get forcible possession of his agricultural land, upon which, the complainant rushed towards the place of occurrence and tried to stop the accused party. The accused party while aiming their respective weapons towards the complainant party stated that if somebody come near them, will be done to death and

thereafter while extending threats of dire consequences, decamped from the spot. Hence, this case.

3. I have heard learned counsel for the petitioner as well as learned Assistant District Public Prosecutor meticulously and scanned the record minutely.

4. Facts in short which constrained the petitioner to file instant petition under section 498, Cr.P.C. before this Court are that the petitioner applied bail before arrest which was confirmed from the court of learned Additional Sessions Judge, Liaquatpur, District Rahimyar Khan vide order dated 10.01.2019. Subsequently, after completion of investigation, report under section 173, Cr.P.C. was submitted before the court of learned Magistrate Tehsil Liaquatpur, District Rahimyar Khan. After observing all pre-trial Codal formalities learned trial court framed the charge against the petitioner and his co-accused on 11.06.2019 but the petitioner subsequently absented himself from the learned trial court whereupon his non-bailable warrants of arrest were issued and ultimately he was declared Proclaimed Offender in accordance with law on 25.09.2021. The order dated 25.09.2021 passed by learned trial court is hereby reproduced as under:-

“In the light of above recorded statement of the process server, proclamations u/s 87, Cr.P.C. were duly served upon the accused **Muhammad Mosa** But the accused has not put his appearance before the court within prescribed period, therefore, the accused is declared as proclaimed offender in the case in hand. Perpetual non-bailable warrants of arrest of the accused be issued which shall remain operative till arrest of the accused. Ahlmad is directed to get entered the

perpetual non-bailable warrants of arrest in the relevant register and deliver the same to Naib Court. The bail bonds of accused are confiscated in favour of the State. Separate proceedings against the surety of accused person be initiated u/s 514. Cr.P.C. Trial of accused Muhammad Mosa is hereby separated from other accused persons. Now to come for arguments on the application for alteration of charge on 03.11.2021.

5. Thereafter, the petitioner again applied bail before arrest which was heard and decided by learned Additional Sessions Judge, Liaquatpur and petitioner's second application under section 498, Cr.P.C. was also confirmed vide order dated 13.12.2021 with the direction to furnish fresh surety bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the learned trial court within three days. The petitioner/ accused was also directed to appear before the learned trial court and join the proceedings of the trial as per law and if the petitioner will not join the proceedings of the challan and furnish fresh surety bond then law will take its due course.

I have observed that in spite of obeying the supra mentioned directions issued by the Court of learned Additional Sessions Judge, Liaquatpur, the petitioner again remained away from the process of law and lastly filed 3rd application under section 498, Cr.P.C. before the court of learned Additional Sessions Judge, Liaquatpur on 15.05.2023 which was dismissed vide order dated 17.05.2023. Hence, this petition before this Court.

6. After hearing the arguments of both sides some legal questions have arisen from the facts and circumstances of the case which are mentioned below:-

- i) *Whether 2nd and 3rd petitions under sections 498, Cr.P.C. before the Sessions Court were competent after the confirmation of 1st bail before arrest on merits?*
- ii) *Whether order dated 25.09.2021 passed by learned Magistrate Section 30, Liaquatpur with respect to issuance of non-bailable warrants of arrest and declaring the petitioner Proclaimed Offender was not revisable?*
- iii) *Whether bail granted by the higher forum can be recalled by the fora below?*
- iv) *Whether issuance of non-bailable warrants of arrest by the learned trial court would not tantamount to cancellation of bail of the petitioner?*
- iv) *Whether issuance of non-bailable warrants of arrest or cancellation of bail order under section 497(5), Cr.P.C. are not revisable orders?*

To decide the above mentioned questions of law it would be appropriate to have a glance over the provisions of sections 498, 497(5), 439 and 439-A, Cr.P.C. which are hereby reproduced for facilitation

498. Power to direct admission to bail or reduction of bail: The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail

required by a police officer or Magistrate be reduced.

497. When bail may be taken in case of non-bailable offence: (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:
Provided ...
Provided ...

Proviso : [Omitted by the Ordinance, LIV of 2001.]

(2)

(3)

(4)

(5) A High Court or Court of Session 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.

439. High Court's powers Of revision: (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court, may, in its discretion,, exercise any of the powers Conferred on a Court of Appeal by Sections 423, 426, 427 and 428 or on a Court by Section 338, and may enhance the sentence and, when the Judges Composing the Court of Revision are equally divided in. opinion, the case shall be disposed of in manner provided by Section 4.29.

(2) No order under this section, shall be made to the prejudice of the accused unless he

has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Magistrate of the First Class.

(4) Nothing in this section shall be, deemed to authorize a High Court—

(a) To convert a finding of acquittal into one of conviction; or

(b) to entertain any proceedings in revision, with respect to an order made .by the Sessions Judge under Section

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled at so to show cause against his conviction.

439-A. Sessions Judge's powers of revision: (1)

In the case of any proceedings before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to his knowledge, the Sessions Judge may exercise any of the powers conferred on the High Court by Section 439.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.

The record reflects that petitioner's first application for grant of bail before arrest was confirmed from the court of learned Additional Sessions Judge, Liaqatpur vide order dated 10.01.2019

on merits and his subsequent two other bail applications filed under section 498, Cr.P.C. before the court of learned Additional Sessions Judge, Liaquatpur were not competent. It may not be out of place to mention here that order dated 25.09.2021 passed by the learned Magistrate Section 30, Liaquatpur qua issuance of non-bailable warrants of arrest and declaring the petitioner proclaimed offender was a revisable order in the light of section 439-A, Cr.P.C. and the above mentioned order cannot be set aside by the Sessions Court while exercising its powers under section 498, Cr.P.C.

7. Insofar as the contention of learned counsel for the petitioner that pre-arrest bail confirmed by the learned Additional Sessions Judge cannot be cancelled by the learned Magistrate section 30 is concerned, it is an admitted fact that the learned Magistrate section 30 cannot cancel the bail granted by the higher forum, however, can issue non-bailable warrants of arrest of the accused and production of accused before him besides proceeding against surety under section 514, Cr.P.C. Reliance is placed upon the following case laws tilted as **Bahadur Ali vs. The State** (1968 P.Cr.L.J. 1138), **Ali vs. The State** (PLD 1980 Karachi 303), **Manzoor Ahmad Bhatti vs. The State** (1985 P.Cr.L.J. 1558), **Ghulam Sarwar vs. The State** 1988 MLD 2021) and **Muhammad Ashraf alias Moni vs. The State and another** (2013 P.Cr.L.J. 1445). I have observed that in the instant case the learned Magistrate has not cancelled the bail of the petitioner, though he has issued his non-bailable warrants of arrest and thereafter declared him as proclaimed offender in accordance with law.

8. Taking this case from the other angle that issuance of non-bailable warrants of arrest would tantamount to cancellation of bail in the light of case laws **Yousaf Masih vs. The State** (1987

P.Cr.L.J 1412) and **Fawad Ali vs. The State and others (2019 SCMR 1641)** wherein it has been held by the apex Court as under:-

“During the pendency of the proceedings before the High Court the private respondents in these petitions had failed to appear and resultantly non-bailable warrants for their arrest had been issued which could not be executed. The law already stands settled that if an accused person admitted to bail is subsequently declared a Proclaimed Offender or non-bailable warrants for his arrest are issued then such declaration or issuance of non-bailable warrants ipso facto amounts to cancellation of that accused person’s bail”.

It has been well settled by now that if any bail order is recalled under section 497(5), Cr.P.C. and against cancellation/recalling of bail order remedy under section 498, Cr.P.C. is not competent because the same is also revisable order. Reliance is placed upon the case laws tilted as **Muhammad Malik Pervaiz vs. The State (1968 P.Cr.L.J. 196)**, **Haji Behram Khan vs. Akhtar Muhammad and 7 others (1993 P.Cr.L.J. 71)** and **Raja Sajjad Hussain vs. The State and another (2017 P.Cr.L.J. 1513)**. For the foregoing reasons, I am quite confident to hold that in both situations, i.e. issuance of non-bailable warrants of arrest or cancellation of bail under section 497(5), Cr.P.C. revision is competent and same cannot be challenged through a petition under section 498, Cr.P.C.

9. Another intriguing aspect of this case which cannot be lost sight of is that the petitioner is avoiding process of law since 25.09.2021 and it has been well settled proposition of law that noticeable absconscion loses some of normal rights guaranteed under the law, as observed in the cases titled as **Alamzaib vs. Haji Muhammad Ramzan and another (2000 MLD 1718)** and **Zahoor Khan vs. Akhtar Muhammad and another (2020 SCMR 993)**.

10. Another crippling feature of this case which cannot be ignored is that after confirmation of 2nd bail before arrest vide order

dated 13.12.2021 passed by learned Additional Sessions Judge, Liaquatpur the petitioner had not submitted fresh bail bonds within three days by surrendering himself before the learned trial court which clearly manifests that the petitioner is playing hide and seek with the courts on one pretext or the other. In the peculiar circumstances of this case, I am of the view that the petitioner is not entitled for any concession because the Hon'ble Supreme Court of Pakistan has deprecated this practice. Wisdom is derived from the case laws titled as **Muhammad Sadiq and others vs. The State and another** (2015 SCMR 1394) and **Mukhtar Ahmad vs. The State and others** (2016 SCMR 2064).

11. Aftermath of the above said discussion is that instant petition has no force and the same is hereby **dismissed**

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

JUDGE

Announced on 16.06.2023

Dictated, prepared and signed on 26.06.2023

Khurram