

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
(JUDICIAL DEPARTMENT)

Criminal Revision No.255 of 2023

Muhammad Aslam Versus The State etc.

J U D G M E N T

Date of hearing	24.10.2023
The Petitioner by	Mr. James Joseph, Advocate.
The State by	Mr. Adnan Latif Sheikh, Deputy Prosecutor General.
The Respondent No.2 by	Malik Nazar Hussain Ponta, Advocate.

Muhammad Amjad Rafiq, J:- This revision petition calls in question, the order dated 07.06.2023 passed by the learned Additional Sessions Judge, Muzaffargarh, whereby application filed by the petitioner for recalling of order dated 07.03.2023 was dismissed.

2. The facts of the case framed Muhammad Imran/respondent No.2 as accused of FIR No. 48/21 dated 08.02.202 u/s 302/34/109 PPC police station Mahmood Kot, District Muzaffargarh, with a joint role of causing injuries with knife on the person of Muhammad Arif deceased father of the complainant. Initially, Muhammad Imran was found innocent during investigation, therefore, he withdrew his petition for pre-arrest bail on 10.03.2021 from the Court presided by Additional Sessions Judge/MCTC, Kot Adu. Consequently, his name was placed in column No. 2 of report u/s 173 Cr.P.C. (the Code) while co-accused Muhammad Tariq was challaned in column No.3 of said report. Later due to change of investigation, DSP entrusted with investigation opined against the respondent at his back, which was intervened through filing a writ petition No. 7347/21; upon which investigation was entrusted to DIG Dera Ghazi Khan and in the meantime, respondent No.2 had also

filed another petition for pre-arrest bail but withdrew the same on 28.10.2021 from the Court presided by Additional Sessions Judge, Muzaffargarh because the investigation was pending but surprisingly a report u/s 173 the Code dated 17.03.2023 was prepared at the back of respondent No.2 showing him as absconder for proceedings under section 512 of the Code, and it was forwarded to the Court on 18.03.2023, but by the time trial was in progress and on the application of petitioner/complainant for summoning of accused/respondent No. 2, he was summoned to face trial by virtue of order dated 07.02.2023 and consequent thereupon he was before the Court on 07.03.2023 well before filing of report styled as under section 512 of the Code. copies under section 265C of the Code was delivered to him on the same day and he was taken on trial.

3. Learned Counsel for the petitioner states that without granting bail to an accused he cannot be taken on trial while accepting his bond under section 91 of the Code for his appearance, and was of the view that section 91 of the Code is only applicable to the proceedings in a private complaint case. It was controverted by learned counsel for the respondent by relying on judgments cited in the impugned order. However, learned DPG has stated that though State has not assailed that order but respondent No.2 being absconder in a case of murder must not have been taken on trial just on his executing a bond under section 91 of the Code. If this practice persists or is given a go, then offenders would prefer to be at large till their summoning by the Court for trial, and just by executing a bond they would simply avoid their arrest, which would affect and hamper the investigation.

4. Heard; record perused

5. Before dilating upon the legal query involved in the case, it is necessary to see how the learned trial Court attended the situation. The order dated 07.03.2023 was when assailed before the learned trial Court, it while declining the request to recall the same passed the impugned order dated 07.06.2023 with following observations:-

“Record goes to reveal that initially report u/s 173 Cr.P.C. was submitted to the extent of Tariq accused while placing his name in column No. 3. Subsequently, on 21.05.2021 report u/s 173 Cr.P.C. was submitted to the extent of accused Muhammad Imran and Ghulam Hussain while placing their names in its column No.2, therefore, said accused persons were not summoned by the court till that time. On 09.06.2021 charge was framed only against the accused Muhammad Tariq. On 01.02.2023, examination in chief of two prosecution witnesses was recorded. In the light of recorded evidence and finding sufficient incriminating material against accused Imran he was also summoned to face the trial vide order dated 27.02.2023. Upon his first appearance in the court, the court while relying upon 2017 YLR 1296 (Pesh), 2014 SCMR 1762 & 2015 SCMR 56 directed the accused to furnish his surety bonds u/s 91 of Cr.P.C. for his future appearance in the court. The accused Muhammad Imran is appearing before this court regularly. The complainant has failed to assign any valid reason for recalling of order dated 07.03.2023 passed by this court. Hence the petition in hand is devoid of merits stands dismissed.”

6. Responding to the questions raised by learned counsel for the petitioner that as to whether applicability of section 91 of the Code is limited to trial in private complaint only or it as a part of sub-chapter-D of Chapter VI of the Code, “**Other Rules regarding Processes**” being of general nature is applicable to State case as well, the case reported as “SARWAR and others Versus The STATE and others” (2014 SCMR 1762) is referred, wherein Hon’ble Supreme Court while referring sections 91, 190 & 204 of the Code, has held that after taking cognizance of an offence by the Court through any of three modes as mentioned in section 190, followed by commencement of proceedings under section 204, it has power to take bond from the accused under section 91 of the Code, in order to secure his presence during the trial. This view also finds its place in following cases reported as “BARKATULLAH Versus The STATE and another” (2017 YLR 1296); “MUSTAFA and others Versus THE STATE” (2009 YLR 1375); NOOR “MUHAMMAD IJAZ Verus NADEEM and 3 others” (PLD 2006 Lahore 227); For reference section 91 of the Code is reproduced as under:-

91. Power to take bond for appearance. *When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summon or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.*

In the case cited above as **2014 SCMR 1762** while approving case reported as “*Mazhar Hussain Shah v. The State*” (1986 P Cr. LJ 2359) and affirming case reported as “*Syed Muhammad Firdaus and others v. The State*” (2005 SCMR 784) & “*Reham Dad v. Syed Mazhar Hussain Shah and others*” (Criminal Appeal No.56 of 1986), Hon’ble Supreme Court has held that it is not necessary that an accused of non-bailable offence must be granted bail before asking him to execute bond with or without sureties under section 91 of the Code because provisions of section 91 and 497 of the Code are meant for different situations.

“(i) A process is issued to an accused person under section 204, Cr.P.C. when the court taking cognizance of the offence is of the "opinion" that there is "sufficient ground" for "proceeding" against the accused person and an opinion of a court about availability of sufficient ground for proceeding against an accused person cannot be equated with appearance of "reasonable grounds" to the court for "believing" that he "has been guilty" of an offence within the contemplation of subsection (1) of section 497, Cr.P.C. Due to these differences in the words used in section 204 and section 497, Cr.P.C. the intent of the legislature becomes apparent that the provisions of section 91, Cr.P.C. and section 497, Cr.P.C. are meant to cater for different situations.”

In the said judgment, however, it was suggested that on summoning under section 204 of the Code, accused can apply for his pre-arrest bail which may or may not be granted depending upon the circumstances of the case but even in such a case upon appearance of the accused before the Court, the Court in its discretion can require him to execute a bond with or without sureties for his future appearance.

7. When a bond is taken under section 91 of the Code, question of bail does not arise because “bail is only for continued appearance of a person and not to prevent him from committing certain acts” as held by Supreme Court of India in a case reported as “*MADHU LIMAYE Vs. SUB-DIVISIONAL MAGISTRATE, MONGHYR & ORS.*” (1971 AIR 2486). Likewise, in a cited case “*SARWAR and others Versus The STATE and others*” (2014 SCMR 1762), it was held by Hon’ble Supreme Court of Pakistan that issuance of warrant, bailable or non-bailable is meant only to

procure attendance of an accused person before the Court and not for any other purpose.

8. Now I take up the contention of learned DPG that if bond under section 91 of the Code is accepted without asking for bail in each and every case of non-bailable offence, then offenders would not join the investigation rather prefer to be at large till their summoning by the Court for trial. It is misconception that the Court in every case in an omnibus manner shall direct the offender to execute a bond on his appearance before the Court to face the trial. The word “may” used in section 91 of the Code is when read in the light of section 351 of the Code, makes it clear that if the Court deems appropriate can commit the accused to custody for the purpose of trial. Section is reproduced as under:-

351. Detention of offenders attending Court. (1) *Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed and may be proceeded against as though he had been arrested or summoned.*

(2) *When the detention take place [.....] after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.*

This section clearly speaks that even if accused is not under arrest or upon a summons, the Court is still authorized to detain him if he is present before the Court and against whom evidence is available of committing an offence. In a case reported as “THE STATE Versus NATHE KHAN AND 5 others” (1969 P Cr. L J 378), when in a commitment proceedings statement of four witnesses were recorded, a request was made to summon the sixth accused whose name figured in column No. 2 of the report under section 173 of the Code. He was summoned accordingly and directed to execute a bond for his appearance during the inquiry but after completing committal proceedings, learned Magistrate while finding evidence against him arrested the accused and sent him to custody pursuant to section 351 of the Code and then

committed him to trial before the Sessions Court. It was held that when such a person is included in the category of accused then it becomes imperative on the part of Magistrate under sub-section (2) of Section 351 of the Code to have examined all the witness afresh. The High Court did not disturb the detention except declaring the commitment of accused to trial as illegal.

9. Thus, when an accused is summoned to face the trial, the Court has two options, either to ask him to execute bond with or without sureties under section 91 of the Code for his continued appearance before the Court during the trial or commit him to custody as per section 351 of the Code if the evidence is available that he has committed the offence. His such detention shall then be regulated under section 344 of the Code in order to remand him to custody from time to time and at an appropriate stage his request for bail u/s 497 of the Code can be entertained.

10. Keeping in view the above discussion, impugned order dated 07.06.2023 passed by learned Additional Sessions Judge, Muzaffargarh/trial Court calls for no interference as perfect in the circumstances. Consequently, instant criminal revision is **dismissed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

APPROVED FOR REPORTING

JUDGE

*This judgment was announced
on 24.10.2023 and after dictation
and preparation it was signed
on 08.11.2023.
Jamshaid**