

Form No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
Case No. Crl. Revision No.72289/2024

Ehsan Ali Vs The State, etc.

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
1)	18.11.2024	Rana Jamshaid Hussain Khan, Advocate for and with the petitioner. Mr. Nisar Ahmad Virk, Deputy Prosecutor General (on Court's call).

Through this petition, following prayer has been made:-

"Under the circumstances, it is humbly prayed that this revision petition may kindly be accepted and impugned order dated 29.10.2024 passed by the learned Additional Sessions Judge Sialkot may very kindly be set aside declaring the same as illegal and unlawful and the order dated 08.08.2024 passed by learned Additional Sessions Judge Sialkot may very kindly be upheld to meet the ends of justice.

It is further prayed that till the final decision of instant petition, the operation of the impugned order dated 29.10.2024 passed by the learned Additional Sessions Judge Sialkot may very kindly be suspended and petitioner may very generously be allowed interim relief.

Any other relief which this honourable court may deem fit and appropriate under the circumstances of the case may also be awarded to the petitioner."

2. Brief however necessary facts for decision of instant petition are that petitioner filed application for post-arrest bail in the case through Khawaja Awais Mushtaq, Advocate before learned Sessions Judge, Sialkot on 27.07.2024 (copy of said application is available at pages No.19-21 of this petition), which was entrusted to Mr. Hidayat Ullah Shah, learned Additional Sessions Judge, Sialkot however same was withdrawn from said court without assigning any reason and dismissed as such vide order dated 01.08.2024 passed by Mr. Hidayat Ullah Shah, learned Additional Sessions Judge, Sialkot (copy of said order is available at page No.22 of this petition); relevant portion of said order is hereby reproduced:-

"At the very outset, learned counsel for the petitioner has stated that for the time being he does not want to press this bail petition, however, the same may be filed later-on if needed, therefore, this bail petition may please be dismissed as withdrawn. In this regard, signatures of learned counsel for the petitioner have been obtained on the margin of order sheet. Hence, this bail petition is dismissed as having been withdrawn."

On the very next day i.e. 02.08.2024, second application was filed by the petitioner before learned Sessions Judge, Sialkot through the same counsel i.e. Khawaja Awais Mushtaq, Advocate however without mentioning in the same that just one day earlier i.e. on 01.08.2024, first application filed by the petitioner in the case through same counsel has been dismissed as withdrawn, said second application

was entrusted to Mr. Muhammad Irfan Basra, learned Additional Sessions Judge, Sialkot, which was accepted and petitioner was allowed post-arrest bail *vide* order dated 08.08.2024 (copy of said order is available at pages No.27-28 of this petition); Khurshid Bibi, complainant (now respondent No.2 in the instant petition) filed application for re-calling of said order and cancellation of aforementioned post-arrest bail, which application has been allowed *vide* order dated 29.10.2024 passed by learned Additional Sessions Judge, Sialkot (copy of said order is available at pages No.39-40 of this petition); relevant portion of said order is hereby reproduced:-

"Arguments on the application u/s 497(5) Cr.P.C. for cancellation of post arrest bail granted to the respondent No.1/accused Ehsan Ali by the learned predecessor court on 08.08.2024 in case FIR No.873/24 dated 26.05.2024 for the offence 302/324/34 PPC registered at P.S. Cantt, Sialkot have been heard, record perused.

2. *As per record, the respondent No.1/accused Ehsan Ali has been nominated in the case through supplementary statement of the complainant recorded on 26.05.2024 with a specific role of aiding/facilitating the principal accused in fleeing away from the place of occurrence after the commission of offence in his vehicle. Said vehicle has been recovered on pointation of the accused Ehsan Ali. He has also been found guilty by the I.O. during investigation and there is sufficient incriminating material available on record to connect him with the commission of alleged offence.*

3. *The respondent No.1/accused Ehsan Ali moved his first post arrest bail application on 30.07.2024 which was entrusted to the court of Mr. Hadayat Ullah Shah, the then learned Addl: Sessions, Sialkot and the same was adjourned for 01.08.2024 for summoning of complainant and record. On 01.08.2024, in view of the statement of learned counsel for the accused/petitioner regarding withdrawal of the petition, the bail application of the respondent No.1/accused was dismissed as withdrawn. Very next date i.e 02.08.2024 second post arrest bail application of the respondent No. 1/accused Ehsan Ali was moved while concealing the factum of his first post arrest bail application which stood dismissed as withdrawn on 01.08.2024 and without annexing the copy of order on his previous bail application. The bail application was entrusted to the court of Mr. Muhammad Irfan Basra, the then learned Addl: Sessions Judge, Sialkot which was later on granted on 08.08.2024. It is apparent from the record that notices were not served upon the complainant and the second bail application of respondent No.1/accused Ehsan Ali was granted in absence of the complainant. Perusal of record also reveals that during arguments, the learned counsel for the respondent No.1/accused Ehsan Ali did not inform the court about the order on the previous bail application of the respondent No.1/accused Ehsan Ali. Hence it appears that bail granting order of the respondent No.1/accused Ehsan Ali was obtained while keeping the court in dark about his previous bail application and the order on the said application.*

4. *For what has been discussed, the respondent No.1/accused Ehsan Ali while playing fraud with the court and hampering the court proceedings, managed to obtain bail granting order in his favour which is not warranted by law. Therefore, strong grounds are available for cancellation of bail granted to the respondent No.1/accused Ehsan Ali by the learned predecessor of this court. Resultantly, the application in*

hand is allowed the bail granting order dated 08.08.2024 passed by the learned predecessor court in favour of the respondent No.1/accused Ehsan Ali stands recalled.”

Aforementioned order has been impugned in this petition.

3. Learned counsel for the petitioner submits that impugned order dated 29.10.2024 passed by learned Additional Sessions Judge, Sialkot is against the law and facts therefore same is liable to be set-aside.

4. On the other hand, learned Deputy Prosecutor General has supported the impugned order.

5. **After hearing learned counsel for the petitioner, learned Deputy Prosecutor General for the State and going through available record appended with this petition,** it has been noticed that first application for post-arrest bail filed by the petitioner in the case on 27.07.2024 was withdrawn without assigning any reason by learned counsel for the petitioner and dismissed as withdrawn *vide* order dated 01.08.2024 passed by Mr. Hidayat Ullah Shah, learned Additional Sessions Judge, Sialkot, then on the very next day i.e. 02.08.2024, petitioner through same learned counsel filed 2nd application for post-arrest bail in the same case while concealing the fact of dismissal of earlier application and for the said reason, second application was entrusted to Mr. Muhammad Irfan Basra, learned Additional Sessions Judge, Sialkot which was accepted *vide* order dated 08.08.2024.

Withdrawing first application and then on the very next day, filing another application through the same counsel while not mentioning dismissal of earlier application resulting into entrustment of 2nd application to another learned Additional Sessions Judge, Sialkot, getting bail from there and even not disclosing earlier dismissal of application at the time of final arguments in 2nd application clearly reflects the violation of ratio as well as spirit contained in the case of “**The STATE THROUGH ADVOCATE-GENERAL, N.W.F.P. versus ZUBAIR AND 4 OTHERS**” (PLD 1986 SC 173) and its revisit (2002 SCMR 171) and “**Nazir Ahmed and others versus The State and others**” (PLD 2014 Supreme Court 241).

Relief obtained by way of such foul play i.e. concealing dismissal of earlier petition cannot be permitted to remain in the field, therefore, irrespective of the merit of the case, impugned order has been passed by learned Additional Sessions Judge, Sialkot while keeping in view the peculiar facts and circumstances as well as settled principles of law on the subject, therefore, same needs no interference by this Court. It goes without saying that in the case of "**Farooq Hussain and others Versus Sheikh Aftab Ahmad and others**" (**PLD 2020 Supreme Court 617**), it has been clearly observed that if the Court having examined the decision challenged before it, is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, then Court can simply endorse the impugned decision and adopt the reasoning of the court below; relevant portion of the said order is hereby reproduced: -

"It is emphasized that if this Court, having examined the judgment challenged before it, is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, this Court can simply endorse the impugned judgment and adopt the reasoning of the court below. In such a case, re-tracing the same path travelled by the court below appears to be an unnecessary exercise and a waste of public time-time which can be allocated to other cases where the decisions of the courts below have been overturned or modified. Finding no reversible error in the judgment, a concise, simple order can suffice. On the other hand, if the Court is to reverse or modify the judgment of the court below, the reasons for the reversal or modification must be set forth.

3. This approach adopted by the court, is by no means a short-cut which is offensive to fair trial under Article 10-A of the Constitution nor does it in any manner undermine due process and fair-play. It is simply a creative way forward that spares the Court from writing opinions where a mere adoption of a well-reasoned judgment of the court below through a short order serves the purpose adequately."

6. In view of what has been discussed above, instant petition is without merits and is hereby **dismissed in limine**.

**(Farooq Haider)
Judge**

"Approved for reporting"

**(Farooq Haider)
Judge**