

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Dost Muhammad Khan

Mr. Justice Sardar Tariq Masood

Mr. Justice Mazhar Alam Khan Miankhel

**CRIMINAL PETITION NO.662 OF 2017**

(On appeal against the judgment dated 22.5.2017  
passed by the Lahore High Court, Multan Bench, Multan  
in Crl.Misc. No.2593-B/2017)

Muhammad Tanveer

Petitioner

**Versus**

The State and another

Respondents

For the Petitioner : Mr. Ijaz Ahmad Toor, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State : Ch. Muhammad Sarwar Sidhu, APG Pb.  
Muhammad Ijaz, ASI

Date of Hearing : 22-08-2017

**JUDGMENT**

**Dost Muhammad Khan, J.**— The petitioner was booked in Crime No.902 dated 19.10.2016, registered at Police Station Mumtazabad, Multan u/Ss. 381-A/411 PPC. He was refused grant of bail by the Courts below therefore, he seeks leave to appeal against the order of the Lahore High Court, Multan Bench, Multan dated 22.5.2017.

2. The allegations against the petitioner are that, Usman Waseem the complainant parked his CD-70 Honda Motorbike bearing Registration No.MNP-7713 near Doctor Zaheer's clinic and when he returned after getting medicines from the clinic, he found the motorbike missing then, he got registered the case against unknown accused.

3. At a subsequent stage, allegedly, the said motorbike was recovered from the house of the petitioner thus, he was implicated in the case.

4. None has witnessed the lifting of the motorbike and no evidence to that effect is available on record, therefore, the insertion of section 381-A PPC appears not only unjustified but also speaks about *mala fide* of the police. Whether in the peculiar circumstances of the case, the petitioner is liable to be prosecuted u/s 381-A PPC or 411 PPC, is a debatable question to which the Trial Court shall give due consideration, being a borderline case and when none of the two offences are punishable with imprisonment falling within the prohibitory limb of section of 497 Cr.P.C then, refusing to grant bail to the petitioner would be highly unjustified.

5. The High Court and the Trial Court refused to grant bail to the petitioner on the ground that he was involved in some other cases of the same nature, without taking care that what was the final result of those, because today we are provided additional documents where in all those cases the petitioner has been granted bail.

6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497 Cr.P.C, invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like

petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation.

7. The Supreme Court regulating the grant or refusal of bail has since long laid down binding and guiding principles however, the principle in two cases, out of many are directly attracted to the present case, are mentioned herein once again. In the case of Mansha Khan v. The State (1977 SCMR 449) it was held as follows:-

*“— S.497 Cr.P.C. read with section 325/34 PPC— Grievous hurt – Bail – Offence u/s 325 PPC (repealed) being punishable with 7 years R.I. is not one of such offences where bail is to be refused by reason of prohibition contained in section 497 Cr.P.C.— held, bail in such cases, hence, not to be refused merely because of offence being non-bailable— Any strong reason being absent to refuse bail, Courts below, held, not properly exercised their discretion in refusing bail on basis of number of injuries suffered by victim of attack.”*

8. In the case of **Tariq Bashir V. The State (PLD 1995 SC 34)** this Court has taken notice of stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offences punishable with imprisonment of less than 10 years. It was held that *“bail in such offences shall not be refused.”* This Court took further pains by reproducing the entire provision of section 497 Cr.P.C. and further held that ***“grant of bail in such offences is a rule and refusal shall be an exception, for which cogent and***

***convincing reasons should be recorded.***” While elaborating exceptions, albeit it was mentioned by this Court that if there is a danger of the offence being repeated if the accused is released on bail, then grant of bail may be refused like the two Courts below in this case have held but it was further elaborated that such opinion of the Court shall not be founded on mere apprehension and self assumed factors but the same must be supported by cogent reasons and material available on record and not to be based on surmises and artificial or weak premise.

9. Even otherwise to ensure that the accused may not repeat the same offence, if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offence would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such a ground should not be an absolute bar in the way of grant of bail.

10. There is a sky high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration.

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. Today every prison is accommodating convicted and under-trial prisoners more than double of its capacity and allied

facilities besides the State authorities are involved on daily basis in transporting such under-trial prisoners from the prisons to the Court premises on every date of hearing, involving risk and extra expenditures from the public exchequer while on the other hand the dependent family members, especially the school going children of the under-trial prisoners charged for such offences are left without proper care and supervision of the father or mother when their parents are sent to jail, therefore, their academic career is always at stake and they are tempted and persuaded to indulge in unsocial or anti-social activities ultimately landing them in the field of crimes, which is not good for the society at large.

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 an 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.

14. Although in some special laws there are specific provisions, limiting the scope of section 497 Cr.P.C. however, this Court in many reported cases has laid down binding principles that the provisions of section 497 Cr.P.C. shall not be ignored even in those cases and the guiding provisions/principles given therein shall always be kept in mind while considering the grant or refusal of bail.

In this regard the case of **The State v. Syed Qaim Ali Shah (1992 SCMR 2192)** and the famous case of **Khan Asfandiyar**

**Wali and others v. Federation of Pakistan (PLD 2001 SC 607)**

are much relevant, where principle of section 497 Cr.P.C. was held to be applicable even to such cases of-course subject to slight limitation.

15. We expect the Courts below to adhere to these binding principles in future and not to act mechanically in the matter of granting or refusal of bail because liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach.

16. Accordingly, this petition is converted into appeal and the same is allowed. The petitioner is granted bail in the sum of twenty thousands rupees (Rs.20,000/-) with one surety to the satisfaction of the Trial Court or Duty Magistrate. In case the bailbonds are attested by the Duty Magistrate then, it shall be forwarded to the Trial Court to be placed on the judicial file for future course of action.

Judge

Judge

Judge

Islamabad, the  
22<sup>nd</sup> August, 2017  
Saeed /-

“Approved for reporting”