

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT.)

Crl. Misc. No. 93-BC/2020

Muhammad Maalik
Versus
Ch. Imran and others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01.06.2020	Syed Khawar Ameer Bukhari, Advocate for the petitioner. Mr. Arshad Bashir Malik, Advocate alongwith respondent No.1. Mr. Mudassar Hussain Malik, Advocate for respondent No.2. Mr. Zohaib Hassan Gondal, State Counsel. Naveed Sub-Inspector and Mateen, S.I.

Ghulam Azam Qambrani, J.:- The petitioner (Muhammad Maalik) seeks cancellation of bail granted in favour of respondents No.1 & 2/accused, in case F.I.R No. 412, dated 15.12.2019, under Sections 506-ii, 337-H-ii, 148, 149 & 440 PPC, registered at Police Station Lohi Bher, Islamabad.

2. Brief facts of the case are that the complainant/ petitioner lodged the instant F.I.R with the allegation that the accused/respondents No.1 & 2 alongwith others, while equipped with firearms, iron rods trespassed into the land measuring 158-Kanals, belonging to the Naval Anchorage, Islamabad, made straight firing and also injured one of the witnesses, hence the instant F.I.R.

3. The respondents/ accused applied for the grant of pre-arrest bail before the learned Additional Sessions Judge, Islamabad-East, which was confirmed vide order dated 27.01.2020, hence, the instant petition.

4. Learned counsel for the petitioner submits that the malafide on the part of the complainant is a

sine qua non for the confirmation of pre-arrest bail, which is missing in the instant case; that the accused persons made straight and aerial firing and thus caused harassment in the area; that the accused persons are leaders of "*Qabza Group*" and 25 co-accused were arrested at the spot along with firearms in heavy quantity and about 100 empties were recovered from the spot, but the learned Additional Sessions Judge failed to take into consideration this fact while granting pre-arrest bail to the accused persons whereas the parameters for confirmation of pre-arrest bail are different from the grant of after arrest bail. Further the bail granting order is unjustified, as the place of the occurrence is a residential area of naval officials, the accused persons tried to take possession of the land by terrorizing the residents of the area; as such, the accused persons are not entitled to the grant of pre-arrest bail.

5. On the other hand, learned counsel for the respondents/accused Imran submits that on the complaint of Tahir Mehmood, Member Executive, FEGHS and Incharge of lands owned by the Jinnah Garden, had already lodged F.I.R No.411 at 12.00 PM on 15.12.2019 against 20/25 armed employees of Naval Anchorage with the allegation that they tried to occupy the land of Jinnah Garden illegally and forcefully, which they purchased from Ghulam Hussain, Nisar Jaffery and Talib, and that they also beaten the Security Guards namely Muhammad Siddique, Abdul Qadeer etc and also snatched their weapons; that they had already got a stay order from the competent of Court of law at Islamabad, with regard to the said land, whereas the petitioner/complainant has lodged the instant F.I.R in retaliation to the same at about 1.30 PM. Next submits that they

are in possession of the said piece of land; that no specific role has been assigned to the respondents; that the accused did not misuse the concession of bail nor did they threaten the complainant and his witnesses in any manner. Learned State counsel opposed the impugned order contending that the recovery of weapons of offence is yet to be made and requested for cancellation of bail granted to the respondents.

6. Arguments heard, record perused.

7. Perusal of the record shows that the Incharge of the landed property of Jinnah Garden Housing Society had already lodged F.I.R No.411 dated 15.12.2019 at 12.00 p.m. stating therein a totally different version that 20/25 employees of Naval Anchorage had tried to occupy the land of the Jinnah Garden illegally and forcefully, but thereafter, the instant F.I.R No.412 was lodged by the other side at about 1.30 p.m. as such, at this stage, it ~~is~~ cannot be determined who was the aggressor and who was aggressed upon, as it can only be determined after recording of prosecution evidence.

8. It is settled principle of law that considerations for the grant of bail are quite different from the considerations for the cancellation of bail. Once bail has been granted by a competent Court of law, strong and exceptional grounds are required for cancelling the same. In such cases, it is to be seen as to whether order granting bail is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice, whereas in the instant case, the petitioner has failed to establish any such ground. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings. Courts have always been slow to cancel bail

already granted as the liberty of a person cannot be curtailed on flimsy grounds. No interference with an order of bail is required to be made unless the order lacks in reasons or is perfunctory in nature.

9. Once bail has been granted, the prosecution should make out strong case for cancellation not by making allegation alone but by giving substantive proof of such allegation. The cancellation of bail is harsh order because it interferes with liberty of an individual hence it must not be restored to lightly and power to take back in custody is to be exercised with due care and circumspection.

10. Similar observations were made by the august apex court in case reported as **Abdul Rasheed Khan v. Zahoor Ahmed Malik** (PLD 2011 S.C. 210), wherein it was observed as follows:--

"We have been informed that Challan has already been submitted in this case. This Court is generally slow in cancelling an accused person's bail at such a stage of a criminal case. No allegation has been levelled by the petitioner-complainant, the State or National Accountability Bureau regarding misuse or abuse of concession of bail."

11. Considering the case of present respondents/ accused for the grant of bail on the above touchstone, I am of the view that the discretion exercised by the learned Additional Sessions Judge, Islamabad-East, in granting pre-arrest bail to the respondents, is not arbitrary or against the settled principles of law, hence, cannot be interfered with. There is no evidence that the respondents have tampered with the prosecution evidence or misused the concession of bail. The bail can only be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for the grant of

bail. In this regard, reliance is placed on the Judgments titled "The State Vs Khalid Mehmood" [2006 SCMR 1265] and "Ahsan Akbar Vs The State" [2007 SCMR 482].

12. I have also gone through the impugned order dated 27.01.2020, which is based upon legal principles and no illegality has been observed, therefore, requirement of Section 497(5) Cr.P.C is not visible as no perversity, illegality or violation of Court order or tampering with evidence of this case has been established against respondents No.1 & 2, therefore, instant petition is without any merit and the same is hereby ***dismissed***.

13. However, the observations made hereinabove are meant for disposal of this petition, which shall have no bearing on merits of the case.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE ✓

H. Saeed.