

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Cr. Min 606-BC 2014

Titled Sultan Mahmood Vs Mansoor Shamsi etc.

- (a) Judgment approved for reporting ☒ Yes / ☐ No
- (b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made. ☐ Yes / ☒ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

**ORDER SHEET.****IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT.**

Criminal Misc. No.606-BC-2014

Sultan Mahmood

Vs.

Mansoor Shamsi &amp; Another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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17.10.2014

Raja Muhammad Farooq, Advocate for the  
petitioner.

Through this petition, the petitioner seeks cancellation of post arrest bail granted to respondent No.1 vide order dated 17.06.2014 passed by this Court.

2. Precisely, facts of the case as narrated in the FIR bearing No.473/2007 dated 16.11.2007 u/s 489-F PPC registered at P.S. Kohsar, Islamabad are that petitioner had paid Rs.13,80,000/- for the purpose of getting VISA for England for himself as well as for his family to respondent No.1, who on failure to do the needful, issued a cheque dated 19.11.2007, which was dishonoured on its presentation.

3. Respondent No.1 filed petition for bail after arrest, which was dismissed by the learned Judicial Magistrate vide order dated 06.05.2014. Then, the petitioner preferred bail petition before the learned Sessions Judge (West), Islamabad which too met the same fate vide order dated 17.05.2014. There-after, the petitioner approached this Hon'ble Court for the above purpose. This Court vide order dated 17.06.2014 allowed bail to respondent No.1, hence this petition for cancellation of bail.



4. Learned counsel for the petitioner has mainly argued that complainant was not put on notice to pursue the bail petition filed by respondent No.1 before this Court therefore proper assistance could not be provided to the learned Standing Counsel during hearing of bail petition. Due to previous conduct of accused/respondent No.1, there is every likelihood of his absconsion, as he had already absconded for a longest period. Moreover, respondent No.1, at one time, misused the concession of bail therefore non-bailable warrants were issued by the learned trial court, which were later on recalled extending leniency. In view of above, it has been contended that since respondent No.1 has violated the conditions for grant of bail therefore bail granted to him vide order dated 17.06.2014 may be cancelled.

5. I have gone through the record and heard the arguments.

6. I have perused the order dated 17.06.2014, which shows appearance of learned Standing Counsel, who opposed the grant of bail to respondent No.1, but he failed to explain legal position or to rebut the arguments advanced on behalf of respondent No.1 for grant of bail.

7. This Court while passing order dated 17.06.2014 granted bail to respondent No.1 observed that both Sections specified in the FIR i.e. 419 PPC & 489-F PPC are punishable for three years or fine or both. It was further observed that if the learned trial court convicts the petitioner only with imposition of fine then detention suffered by the petitioner cannot be compensated.



8. Moreover, learned counsel for the petitioner has not been able to satisfy this Court as to which condition for grant of bail or bond has been violated by respondent No.1 after seeking bail from this Court. Though no proof was submitted with regard to absconsion of respondent No.1 as argued, but yet, it is a legal proposition that the absconsion by itself is not a blind rod to kill each and every right of accused.

9. Even-otherwise, respondent No.1 was granted bail by exercising discretionary powers vested to the Court u/s 497 Cr.P.C. The absconsion should not come in the way for refusal of bail or same cannot be made a ground for cancellation of bail.

10. Furthermore, absence of respondent No.1 for which, non-bailable warrants were also issued by the learned trial court which were later on withdrawn is also not a sufficient ground for cancellation of bail.

11. Furthermore, the consideration for cancellation of bail is altogether different from the consideration for grant of bail. No exceptional circumstances shown to have existed for seeking extraordinary indulgence of this Court to deprive a citizen of his liberty. No ground of misusing the concession of bail after passing of the impugned order has been pointed out.

12. Following are the settled principles of law required to be considered while dealing with the petition for cancellation of bail: -

a) *That if the court while granting bail has not violated the principles laid down for grant of bail, the cancellation is not proper;*

b) *Mere fact that there could be another opinion to that of opinion framed on the tentative assessment of evidence, would not be sufficient to cancel the bail, if facts assessed on the test of*



further arguing into the guilt, or innocence of accused in terms of section 497 (2) Cr.P.C.;

- c) Strong and exceptional grounds are required for cancellation of bail;
- d) When trial has already commenced, so to avoid the discussion and remarks upon the merits of the case;
- e) Court while considering cancellation plea has to see whether bail granting order was patently illegal, erroneous, factually incorrect and resulted in miscarriage of justice.
- f) When bail granted by a competent court for valid and cogent reasons, not open to legitimate exceptions;
- g) Whether accused after grant of bail has misused the concession of bail and conditions of bond executed.
- h) In case of fresh ground for cancellation, the court which granted bail should be approached first, as propriety demands.

13. In this regard, I am fortified with the following case law: -

- a) 1970 SCMR 299 (Rehmat Ullah alias Rehman Vs. The State & Another)
- b) 1975 SCMR 230 (Karam Din Vs. Muhammad Ashraf & 02-Others)
- c) 2005 SCMR 1291 (National Accountability Bureau Vs. Khalid Masood & Another)
- d) 2006 SCMR 66 (Suba Khan Vs. Muhammad Ajmal & 02-Others)
- e) 2008 SCMR 1715 (Muhammad Akram Vs. Zahid Iqbal & Others)
- f) 2009 SCMR 1202 (Muhammad Azhar Vs. Dilawar and Another)
- g) 2011 SCMR 815 (Gohar Rehman Vs. Muhammad Tahir & Another)

14. The upshot of above discussion is that cancellation of bail sought is declined. Consequently, instant criminal miscellaneous is dismissed in limine.

*referred*

Uploaded By: "Zulqarnain Shah"

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

*Approved for Reporting  
Blue Slip added.*