

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

Criminal Misc. No. 814-BC/2020
Imran Khan
Versus
Hasnat Shakeel, etc

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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28.07.2020	Raja Abid Mehmood, Advocate for the petitioner, Mr. Shahbaz Shah, learned State Counsel, Malik Qatadah Jamal Khan, Advocate, for respondent No.1.
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Through the instant petition under Section 497(5) of the Code of Criminal Procedure, 1898 ("Cr.P.C"), petitioner/complainant assails order dated 15.06.2020, passed by the learned Additional Sessions Judge, Islamabad-West whereby pre-arrest bail petition of the respondent No.1/accused Hasnat Shakeel, was allowed in case FIR No.198, dated 28.04.2020, under Sections 427, 448, 380, 148 & 149 PPC, Police Station Kohsar, Islamabad.

2. Facts, relevant for the disposal of instant petition are that on 04.03.2020, at about 4:00 p.m., private respondent named above along with co-accused and 25-30 unknown persons duly armed with lethal weapons, took over illegal possession of the guest house No.14, A-14, Main Agha Khan Road, Sector F-6/4, Islamabad, which the complainant had obtained on lease from accused Ms. Naheed Mujtaba. It was also alleged that during the occurrence, the assailants gave beating to Sajjad Ahmad, Mushtaq, Shahbaz and security guard; locked them in a room; took away Rs.5,00,000/- (five

lakh), DVR and other valuables. After the registration of FIR, respondent No.1 moved application in terms of Section 498 Cr.P.C which was allowed by the learned ASJ, Islamabad-East vide impugned order, being assailed through the instant petition.

3. Learned counsel for the petitioner contends that in presence of specific allegations of forceful desertion, snatching of valuables and extending threats while armed with lethal weapons, extra-ordinary concession of pre-arrest bail cannot be extended particularly when the recovery is to be effected; that actually the parties are in litigation over rent dispute regarding the subject premises and that the CDRs confirms the presence of the accused at the scene of crime at the relevant time. Learned counsel placed reliance upon case law reported as 2020 SCMR 249 and 2020 SCMR 313.

4. On the other hand, learned counsel for the respondent No.1/accused contends that as per report of the Bailiff possession of the subject house has been handed over to the petitioner, who tried to take forceful possession and the report by the land-lady, *prima facie*, establishes that the petitioner was aggressor; no ground has been urged warranting cancellation of bail, therefore, petition is liable to be dismissed.

5. Learned State Counsel however, prayed for acceptance of the instant petition, *inter alia* on the ground that the order impugned being contrary to facts and the law on the subject are liable to be set aside; that the investigation fully implicated the respondent No.1/accused with

further evidence of conspiracy and recommended insertion of Section 109 PPC.

6. Heard the learned counsel for the parties and perused the record with their able assistance.

7. The Hon'ble Apex Court of the land in "Samilullah and another V. Laiq Zada and another (2020 SCMR 1115) laid down certain principles governing cancellation of bail as under:-

- "i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.
- ii) That the accused has misused the concession of bail in any manner.
- iii) That accused has tried to hamper prosecution evidence by persuading/ pressurizing prosecution witnesses.
- iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of the court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) The accused misused his liberty while indulging into similar offence.
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused."

When facts of the case-at-hand are considered in the light of above directed guidelines, the case of the petitioner is not covered in any of the said guidelines.

8. The law is by now well settled that for cancellation of bail in terms of Section 497(5) of the Cr.PC, strong and exceptional grounds warranting interference in the bail granting order are required. Section 497 (5) Cr.P.C does not empower the court to cancel the bail even

when the offence is punishable with capital punishment and the discretion termed as *pari meterea* with the principle to be applied for upsetting the order of acquittal. Reliance is placed upon case of “Muzaffar Iqbal V. Muhammad Imran Aziz and others (2004 SCMR 231) and Khalid Ahmad Soomro and others V. The State (PLD 2017 SC 730).”

9. The principles *ibid* if applied to the facts of the instant case, it emerges that admittedly, parties are in civil litigation over a rent dispute regarding the subject house; none of the offences fall within the ambit of prohibitory clause of Section 497 Cr.P.C. and that the learned ASJ, while surveying the entire facts, tentatively observed that the rent proceedings with regard to premises in question stand in negation to whatever the complainant has alleged in the FIR. The observation so referred, clearly indicates that extra ordinary concession of pre-arrest bail was extended to the respondent No.1/accused, on being found the case one of further inquiry.

10. Even otherwise, for seeking cancellation of bail, there should be some material to show that the accused has misused the concession of bail, threatened the prosecution witnesses or hampered or attempted to hamper the evidence, while in the instant case, no such ground has even been alleged.

11. The case laws relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

12. In view of above, the instant petition is devoid of merits and is accordingly dismissed.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

Imran