

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

**Criminal Misc. No. 1204-BC of 2021**

Memoon Ahmed

***Versus***

The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	28.02.2022	Malik Qammar Abbas, Advocate for the petitioner.

Through the instant petition, the petitioner seeks cancellation of post-arrest bail granted to respondent No. 2 vide order dated 19.07.2021, passed by learned Additional Sessions Judge, West-Islamabad, in case FIR No. 386, dated 31.08.2020, offence under Section 406 P.P.C, registered at Police Station Sabzi Mandi, Islamabad.

02. It is alleged that the petitioner gave his car bearing No. AEC-093, Daihatsu Mira on rent basis by executing an agreement to the accused/respondent No.2, who has misappropriated the car,

hence FIR was registered.

03. Learned counsel for the petitioner *inter-alia* contends that sufficient evidence is available against respondent No. 2 / accused; he has specifically been nominated in the F.I.R., hence he was not entitled for grant of bail after arrest and has prayed for cancellation of the same.

04. Arguments heard, record perused.

05. Respondent No.2 was nominated as an accused in FIR No. 386 dated 31.08.2020, offence u/s 406 P.P.C. registered at police station Sabzi Mandi, Islamabad; he was arrested in the case on 20.05.2021; after the completion of investigation, he was sent to judicial lockup; his bail after arrest was dismissed by the Court of learned Judicial Magistrate, Sec-30, West Islamabad vide order dated 29.06.2021; later on, he was granted bail after arrest vide order dated 19.07.2021, passed by

learned Additional Sessions Judge, West-Islamabad.

06. Offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; during the course of physical remand, no recovery has been effected from possession of respondent No.2 / accused; investigation in the case has been completed and he is no more required by the police for the purpose of further investigation.

07. As the respondent No. 2 / accused has been granted bail after arrest by the Court of learned Additional Sessions Judge, West-Islamabad, principles for grant of bail and its cancellation are different, it has been held by Hon'ble Supreme Court of Pakistan in a case titled as **Sami Ullah and another Vs. Laiq Zada and another (2020 SCMR 1115)**, that:

***"Bare perusal of provision of section 497(5), Cr.P.C. it do***

***not demonstrate any specific ground to press into the pretense of said provision of law, however, superior courts of the country from time to time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-***

- i) If the bail granting order in 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 court.***
- v) That the accused has attempted to interfere with the smooth course of investigation***
- vi) That accused misused his liberty while indulging into similar offence.***

***vii) That some fresh facts and material has been collected during the course of investigation with tends to establish guilt of the accused.***

08. Ordinarily the superior Courts are reluctant to interfere into the order extending concession of bail; rather they have shown reluctance to intervene in such like matters. The rationale behind is that once concession of bail is granted by a Court of competent jurisdiction then very strong and exceptional grounds would be required to hamper with the concession extended to a person who is otherwise clothed with free life, any contrary action of the court would be synonymous to curtailing the liberty of such person, which otherwise is a precious right guaranteed under the Constitution of the country.

09. It has also been laid down by the Hon'ble Supreme Court of Pakistan in a

case titled as **Rehmat Ullah Vs. State**  
**(2011 SCMR 1332)**, that;

***"The Courts should not grant  
or cancel bail when the trial is  
in progress"***.

10. Learned counsel for the petitioner has not made any argument regarding misuse of concession of bail after arrest by respondent No. 2 / accused. No recovery has been effected from his possession and trial has been commenced. Further, if bail after arrest is cancelled, no fruitful purpose will be served.

11. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out a case for cancellation of bail granted to respondent No. 2 / accused by the learned Additional Sessions Judge, West-Islamabad vide order dated 19.07.2021, consequently, instant petition stands **dismissed in limine** being meritless.

12. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Ahmed Sheikh