

ORDER SHEET.

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

Crl. Misc. No.122/BC/2019.

Tanveer Ahmed

Versus

Asad Baig 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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28.06.2019. Mr. Qaiser Imam Chaudhry and Mr. Shujaullah Gondal, Advocates for the petitioner.
Muhammad Shakil Abbasi, Advocate alongwith respondent No.1.
Muhammad Younas, ASI, P.S Bhara Kahu, Islamabad.

Through this petition, the petitioner has prayed for cancellation of post-arrest bail granted to respondent No.1 vide order dated 16.02.2019 passed by learned Additional Sessions Judge (East) Islamabad in case FIR No.13/19, dated 10.01.2019, U/S 452/337-F(v)/337-A(i), 337A-(ii)/148/149 PPC, P.S Bhara Kahu, Islamabad.

2. Learned counsel for the petitioner has contended that respondent No.1 is nominated in the FIR with specific role; that sufficient material is available on record, which connects the petitioner with the commission of alleged offence; that learned Additional Sessions Judge has wrongly held that nothing has been recovered from respondent No.1, therefore, case of respondent No.1 is one of further inquiry; that bail granting order has been passed without appreciating the relevant facts; that bail granting order is arbitrary and fanciful.

3. Conversely, learned counsel for respondent No.1 has contended that although respondent No.1 is nominated in the FIR with specific role but during investigation nothing has been recovered from the petitioner, which makes case of the petitioner

one of further inquiry and learned Additional Sessions Judge has passed bail granting order in accordance with law.

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

5. From perusal of the record, it has been observed that the petitioner lodged case FIR No.13/19, dated 10.01.2019, U/S 452/337-F(v)/337-A(i), 337A-(ii)/148/149 PPC, P.S Bhara Kahu, Islamabad against respondent No.1. No doubt the petitioner is nominated in the FIR with specific role but during physical remand nothing has been recovered from the petitioner, which makes case of the petitioner one of the further inquiry as learned Sessions Judge while granting post arrest bail to respondent No.1 has rightly held that accused/petitioner remained on two days physical remand, but no recovery was effected from his possession, which makes the case of accused/petitioner one of further inquiry.

6. The petitioner has filed the instant petition under section 497(5) Cr.P.C. The provisions of section 497 (5) are not punitive in nature and there is no compulsion for canceling the bail, unless the bail granting order is patently illegal, erroneous, factually incorrect and has resulted in mis-carriage of justice or, where the accused is found to be making efforts to misuse the concession of the bail. Bail granting order could be recalled, if same was absurd, fanciful, illegal and arbitrary. Further-more, if the Court concerned had erred in exercise of its discretion in allowing bail. Once a bail is granted by a Court of competent jurisdiction, it must be shown satisfactorily for its cancellation that the discretion exercised by the said Court was either perverse or violative of fundamental principles.

7. The impugned order has been passed with due caution, care and applicability of judicial mind. Moreover, considerations for cancellation of bail are different from those for grant of bail and

learned counsel for the petitioner has failed to point out any consideration, which calls for cancellation of bail granted to respondent No.2. Reliance in this regard is placed upon the judgment of Hon'ble Supreme Court of Pakistan reported as **(2010 SCMR 580) "The State/Anti-Narcotic through Director General Versus Rafiq Ahmad Channa"**, wherein it was held that:-

*"---s. 497(5)---cancellation of bail---principles
---considerations for cancellation of bail are
different from those for grant of bail---bail can
be cancelled, if the order on the face of it is
perverse, patently illegal, erroneous, factually
incorrect resulting in miscarriage of justice or has
been passed in violation of the principles for
grant of bail."*

8. It is also pertinent to mention here that challan has been submitted in the Court and charge has been framed on 09.05.2019 as such trial is in progress. In such situation Courts avoid from interfering in bail granting or refusing orders. Reliance in this regard is placed on the judgment of Hon'ble Supreme of Pakistan vide judgment reported as **(2007 SCMR 1857) "Muhammad Hanif Versus Shafqat Nazir and others"** wherein it was held that:-

*"---s.497-----constitution of Pakistan (1973),
art.185(3)---bail---interference by Supreme Court
after commencement of trial---Supreme Court
ordinarily does not interfere in the bail granting
or refusing orders, if the trial has commenced."*

9. It has also been held by the Hon'ble Supreme Court that the Courts should not grant or cancel bail when the trial is in progress and proper course for the Courts in such a situation would be to direct the learned Trial Court to conclude the trial of the case within a specified period. Reliance in this regard is placed upon the judgment reported as **(2011 SCMR 1332) "Rehmatullah Versus The State and another"**.

10. For what has been discussed above, the instant petition bears no merits, therefore, the same is hereby **dismissed**. However, learned Trial Court seized with the matter is directed to conclude the trial before 31.03.2020.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam