

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

Crl.Misc.No.17-BC/2020  
Muhammad Hameed Khan  
**Versus**  
Amir Siddiq and others

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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**10.02.2020**

**Petitioner in person along with his counsel Mr. Junaid Iftikhar Mirza  
Raja Waqar Ahmad, Advocate for respondents No.1 and 2.  
Ms. Saadia Noreen, learned State Counsel with Zahid Akhtar S.I.  
Respondents No.1 and 2 in person**

Through the instant criminal miscellaneous petition, the complainant/petitioner, Muhammad Hameed Khan S/o Jan Muhammad Khan, seeks cancellation of pre-arrest bail granted to respondents No.1 and 2, vide order dated 11.12.2019, passed by the Court of the learned Additional Sessions Judge, Islamabad, in case F.I.R. No.378, dated 24.11.2019, under Section 489-F P.P.C. registered at police station Lohi Bher, Islamabad.

2. Brief facts as stated in the F.I.R. are that the petitioner/complainant was working as a contractor for the construction of Jinnah Emporium situated at Jinnah Gardens, Islamabad. As per the allegations levelled in the F.I.R., for the construction of said building, respondent No.1 purchased shuttering from the petitioner and issued him a cheque bearing No.12658857 for an amount of Rs.13,00,000/-. Furthermore as regards loss suffered by the petitioner due to stoppage of shuttering work, a cheque bearing No.12658855 was also issued to the petitioner for an amount of Rs.9,00,000/- as profit, which were dishonoured on presentation.

3. It is contended by the learned counsel for the petitioner that the learned Additional Sessions Judge, while confirming the *ad-interim* pre arrest, failed to appreciate that respondents No.1 and 2 are nominated in the F.I.R. with specific role of issuing the cheques in question on account of payment of shuttering alleged to have been used in construction the roofs of Jinnah Emporium; that the issuance of the cheques in question together with their dishonouring *prima facie* connects respondents No.1 and 2 with the commission of alleged crime; that the learned trial Court should have recalled respondents No.1 and 2's bail as they deceitfully took the petitioner's shuttering and issued him cheques in question with dishonest intention; that by allowing/confirming respondent No.1 and 2's pre-arrest bail, they have been exempting from joining the investigation; and that respondent No.1, after obtaining the pre-arrest bail, has been misusing the concession by extending threats of dire consequences to the complainant. Learned counsel has prayed for the petition to be allowed and for the bail granting order to be recalled.

4. Learned counsel for respondents No.1 and 2 vehemently opposed the petition by stating that the learned Additional Sessions Judge, Islamabad, while confirming pre-arrest bail to respondents No.1 and 2, had rightly exercised the extra ordinary jurisdiction after ascertaining the material available on record; that for the purpose of recalling a bail granting order, strong and exceptional grounds are required, which are missing in the instant case; and that even otherwise, alleged offence with which respondents No.1 and 2 have been charged does not fall within the prohibitory clause of Section

497(1) Cr.P.C. Learned counsel for respondents No.1 and 2 has prayed for the petition in hand to be dismissed.

5. I have heard the contentions of the learned counsel for the parties and perused the record with their able assistance.

6. The first question for consideration by this Court in the light of contentions advanced by the learned counsel for the contesting parties is whether discretion in favour of respondents No.1 and 2 was correctly exercised by the learned Additional Sessions Judge, Islamabad, while confirming pre-arrest bail to them and secondly, whether a case for cancellation of bail was made out in the given facts and circumstances of the case. Undoubtedly, under Section 497(5) Cr.P.C. the Court has ample powers to recall bail granted to an accused, but this authority has to be exercised in accordance with the principles laid down by the Superior Courts on the subject. In the case of Tariq Bashir and others Vs. The State (PLD 1995 Supreme Court 34), it was held that Section 497 Cr.P.C. divided non-bailable offences into two categories, i.e. (i) offences punishable with death, imprisonment for life or imprisonment for ten years, and (ii) offences punishable with imprisonment for less than ten years. In bailable offences, the grant of bail is a right and not a favour, whereas in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years), the grant of bail is a rule and refusal is an exception, and that bail will be declined only in extraordinary and exceptional cases.

7. As regards the allegation that respondents No.1 and 2 has been misusing the concession of bail by threatening the complainant is a mere accusation

against them and yet to be proved at trial. The reasons recorded by the learned Trial Court for the grant of pre-arrest bail seem to be reasonable and are tentative in nature, which establish a case of further inquiry.

8. It is a settled principle of law that once discretion has been exercised by the Court of competent jurisdiction for the grant of bail, then the same cannot be reversed or recalled unless the same is either perverse or illegal. Judicial view is consistent on the point of cancellation of bail that once bail is granted by a competent court, there must be strong and exceptional reasons for recalling the same.

9. As mentioned above, for the purpose of cancellation of bail, strong and cogent reasons are required to be furnished, which are lacking in the instant case. In cases where bail is granted then the grounds which are essential for cancellation of bail are *inter-alia* as follows:-

- (i) Exceptionally strong grounds such as abuse / misuse of concession of bail;
- (ii) Bail can be recalled where the person on bail repeats the offence;
- (iii) Hampers the investigation;
- (iv) Makes some efforts to tamper with the evidence;
- (v) Prosecutes the witnesses;
- (vi) Manages to flee away from the country or beyond the control of sureties; and
- (vii) order of bail has been obtained through misrepresentation or suppression of facts.

10. Learned counsel for the petitioner has failed to point out any instance showing respondents No.1 and 2 have misused the concession of bail or their remaining at large would be a serious threat to the evidence brought on record against them. Therefore, I do not find any material which may warrant justification for the interference in the discretion exercised by the lower Court.

11. In view of the above, I do not find any merit in this petition, which is accordingly dismissed.

Qamar Khan\*

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

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