

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.264-BC/2019
Muhammad Ajmal
Versus
Mohammad Umer and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.06.2019	Mr. Sajjad Haider Malik, Advocate for the petitioner Raja Muhammad Umar, Advocate for respondent No.1 Mr. Sadaqat Ali Jahangir, learned State Counsel with Raza Muhammad A.S.I.

Through the instant criminal miscellaneous petition, the petitioner, Muhammad Ajmal S/o Mian Muhammad Akram, seeks cancellation of pre-arrest bail granted to respondent No.1, vide order dated 20.04.2019, passed by the Court of the learned Additional Sessions Judge, Islamabad, in case F.I.R. No.03, dated 02.01.2019, under Section 406 P.P.C. registered at police station Industrial Area, Islamabad.

2. The facts leading to the institution of the instant petition are that on the petitioner's complaint, a case was registered under Section 406 P.P.C. against respondent No.1. It was reported in the F.I.R. that the petitioner/complainant, being a Finance Manager, was running a Telenor Franchise (Cellular Hub) at I-8 Markaz Islamabad, and had employed respondent No.1 as Sales Officer. It was further reported that respondent No.1 was authorized to collect the money in the form of *easy paisa, easy load*, and scratch cards etc. Respondent No.1, while serving as Sales Officer, misappropriated an amount of Rs.19,05,080/- as revealed through the audit of the accounts.

3. Learned counsel for the petitioner/complainant contends that the learned Additional Sessions Judge, Islamabad while confirming the pre-arrest bail granted to respondent No.1, failed to appreciate that he is directly nominated in the F.I.R. with a specific role of misappropriating an amount of Rs.19,05,080/- while serving as Sales Officer in the Franchise of the petitioner; that the learned Additional Sessions Judge, Islamabad while confirming respondent No.1's pre-arrest bail gave findings on the merits of the case; that respondent No.1 had misused the concession of bail and threatened the petitioner of dire consequences and pressurizing him to withdraw the case; and that respondent No.1 is trying to tamper with the prosecution evidence. Learned counsel has prayed for the petition to be allowed and for the bail granting order to be recalled. In support of his submissions, the learned counsel relied upon the case law titled as Muhammad Ilyas Vs. Shahid Ullah (PLJ 2010 Supreme Court 1103) and Zumarad Khan Vs. Ghulam Syedain Rizvi (PLJ 2011 Cr.C. (Lahore) 1014).

4. Learned counsel for respondent No.1, assisted by learned State Counsel, vehemently opposed the petition by stating that the learned Additional Sessions Judge, Islamabad, while confirming the pre-arrest bail, had rightly exercised the extra ordinary jurisdiction in favour of respondent No.1; that there is an unexplained delay in lodging the FIR as the same was lodged against respondent No.1 after forty-five days when he left the petitioner's employment; and that for the purpose of recalling a bail granting order, strong and exceptional grounds are required, which are

absent in the instant case. Learned counsel for respondent No.1 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 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 respondent No.1 was correctly exercised by the learned Additional Sessions Judge, Islamabad, while granting pre-arrest bail to him 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 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. Undoubtedly, Section 406 PPC is non-bailable, but same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is well settled that where a case falls within non-

prohibitory clause of Section 497 Cr.P.C., the concession of granting bail must be favourably considered and should only be denied in exceptional cases.

7. The allegation that respondent No.1 had misused the concession of bail and threatened the petitioner of dire consequences and pressurized him to withdraw the case, is mere accusation against him 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 or confirmation of ad-interim 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 ad-interim bail is confirmed 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 respondent No.1 has misused the concession of bail or his remaining at large would be a serious threat to the evidence brought on record against him. Therefore, I do not find any material which may warrant justification for the interference in the discretion exercised by the lower Court. The case law relied upon by the learned counsel for the petitioner, with utmost respect, is distinguishable and does not apply to the facts and circumstances of the instant case as each and every case has its peculiar facts and circumstances and the Court has to evaluate the same in judicious manner, independently. The investigation officer submitted that respondent No.1 had participated and cooperated in the investigation; that the investigation was complete; and that the *challan* had been submitted.

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

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*