

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc.304-BC/2019.

Abdul Sattar

Versus

Shaukat Ali & another.

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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29.10.2019.	Ch. Qaiser Nazir Sipra, Advocate for the petitioner. Mian Saif Ullah, Advocate for respondent No.1. Barrister Ayesha Siddique Khan, State Counsel. Ashfaq, ASI and Atta Muhammad, ASI alongwith record.
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Through instant petition, the petitioner has prayed for cancellation of bail granted to respondent No.1 vide order dated 04.05.2019 by the Court of Additional Sessions Judge-V, (East), Islamabad in case FIR No.523/18, dated 28.11.2018, U/S 406, 448, 506 PPC, P.S Sihala, Islamabad.

2. Brief facts as referred in the above referred FIR are that the FIR was got registered by the present petitioner with the allegations that he had given his vehicle FX bearing registration No.LOP-5606 to his brother in law/respondent No.1 alongwith Rs.9,50,000/- cash as امانت , which have been misappropriated and even his plot measuring 2 Marlas was illegally taken over by respondent No.1 in absence of the petitioner, who was out of the country at that time.

3. Learned counsel for the petitioner contends that learned Additional Sessions Judge has not considered law on the subject and passed the order in mechanical fashion and the order impugned is perverse and contrary to law; that by granting pre-arrest bail to respondent No.1, the investigation has been

hampered and valuable property of the petitioner i.e vehicle has not been recovered as respondent No.1 has not yet joined the investigation.

4. Conversely, learned counsel for respondent No.1 contends that the petitioner is not owner of the vehicle rather respondent No.1 is the owner, who sold the same to third person and the petitioner has no proof that he is owner of the vehicle or he had ever handed over the vehicle to respondent No.1; that the petitioner is without proof of his contention especially with claim of Rs.9,50,000/-.

5. I have heard learned counsel for the parties and gone through the record.

6. Perusal of the record reveals that the petitioner being complainant of case FIR No. 523/18, dated 28.11.2018, U/S 406, 448, 506 PPC, P.S Sihala, Islamabad alleges that his brother in law/respondent No.1 has misappropriated his vehicle FX-LOP-5606, amount of Rs.9,50,000/- and 02 Marlas property, which was illegally taken over by respondent No.1. After hearing the parties learned Additional Sessions Judge confirmed the pre-arrest bail vide order dated 04.05.2019 only on the ground that the matter in dispute is of civil nature, which is based upon facts, which requires probe and further inquiry and the offence leveled against respondent No.1 does not fall within the prohibitory clause of section 497, Cr.P.C.

7. Beside the above referred view of Additional Sessions Judge, the entrustment of the property in terms of section 405 PPC is mandatory factor for application of offence U/S 406 PPC. Similarly, dishonest misappropriation or conversion of property of others by the accused is also main element, therefore, the

requirement of entrustment of the property is prima facie not visible, even the petitioner has failed to demonstrate from the record that he is recorded as owner in the Excise & Taxation Office, whereby he candidly conceded that he is in possession of receipt of Excise & Taxation Office and the original registration book and record is with respondent No.1. Similarly, amount of Rs.9,50,000/- and dispossession of the petitioner from 02 Marlas land is yet to be proved before the Trial Court in evidence. The I.O of this case contends that he has submitted challan U/S 173, Cr.P.C before the Court, hence, it is trite law that when challan has been submitted in the Court, bail could not be granted or refused. Reliance is placed upon 2011 SCMR 1332 (Rehmat Ullah vs. The State and another).

8. Keeping in view above discussion and mandate of law, the ingredients of cancellation of bail as required in 2010 SCMR 580 (The State/ANTI-NARCOTIC through DG vs. Rafiq Ahmad Channa), 2009 SCMR 786 (Mst. Noor Habib vs. Saleem Raza) and 2006 SCMR 1265 (The State through Force Commander, ANF, Rawalpindi vs. Khalid Sharif), are not visible in this case as bail can be cancelled, if the order on face of it is perverse, patently illegal erroneous, factually incorrect or has been passed in violation of principles for grant of bail and has resulted into miscarriage of justice, however, no such principle has been argued before this Court. Therefore, this petition is misconceived and the same stands dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE