

Form No: HCJD/C

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Miscellaneous No.775/BC of 2017

Zafar Iqbal

VS

Raja Asim Rizwan and another.

Petitioner's by : Mr. Basharat Ullah Khan,
Advocate.

Respondent's by : Muhammad Ilyas Siddiqui,
Advocate.
Malik Awais Haider, State Counsel
& Saif Ullah, S.I.

Date of hearing : 23.02.2018

AAMER FAROOQ, J. - Through the instant petition, the petitioner seeks cancellation of bail granted to respondent No.1 by the learned Additional Sessions Judge (West), Islamabad vide order dated 28.10.2017 in case F.I.R. No.143, dated 14.07.2017 for offences under Sections 302, 342, 34 P.P.C. registered at Police Station Margalla, Islamabad.

2. Learned counsel for the petitioner, *inter alia*, contended that the bail granted to the respondents was on erroneous considerations as he was involved in the case; that the impugned order is against the fact and the law; that the doctor concluded that all the injuries inflicted on

the deceased Muhammad Awais are ante-mortem and not post-mortem; that the deceased was tortured before his death and he died unnatural death; that body of the deceased was recovered from the premises of respondent No.1; that the co-accused i.e. Raja Kamran is the real brother of respondent No.1, whom has been declared as mentally incapable and obtained his Guardianship Certificate; that the prerequisite for granting of bail before arrest are malafide and ulterior motives which was neither pleaded nor has been addressed by the learned Trial Court; that the unnatural death has been confirmed by the doctor.

3. Learned counsel for respondent No.1, *inter alia*, contended that in the interim challan presented by respondent No.2 which exonerated him from the charge on the basis of which he was granted bail before arrest; that subsequent to the said fact two witnesses have been added which clearly indicates that the statements recorded by them are unnatural, hence, the prosecution case has been manipulated and maneuvered; that the bail granted can only be set aside if the same is perverse.

4. The arguments by the learned counsels for the parties have been heard and record perused with their able assistance.

5. Initially when the aforementioned FIR was lodged Respondent No. 1 was not nominated as accused in the same, however, he was nominated through supplementary statement. Respondent No.1 applied for bail before arrest,

which was allowed by the learned Additional Sessions Judge, Islamabad on the ground that subsequent involvement of the respondent is not based on bona fide and that there is nothing incriminating against him and sending him behind bars shall not serve any fruitful purpose.

6. It is trite law that considerations for grant of bail are different from the cancellation of bail. Generally, the bail granted by the court of competent jurisdiction is not cancelled unless the bail granting order is perverse or there is allegation that the accused has misused the concession of bail. In so far as the latter ground is concerned, the same was never argued before the court. The thrust of the arguments by the learned counsel of the Petitioner was that in light of the statement of the witnesses respondent no. 1 is involved in the matter and needs to be put behind bars.

7. In interim challan/report under Section 173 Cr.P.C filed by the police on 14.7.2017, respondent No. 1 was found not to be involved in the case, hence was not arrayed as an accused. However, during the course of subsequent investigation there were two witnesses who made statements that respondent No. 1 is involved in the matter and on the basis thereof supplementary challan was filed on 8.1.2018 in which the name of respondent No. 1 appears in Column No. 4, meaning thereby he is an accused in the matter, but on bail.

8. The Honourable Supreme Court of Pakistan in case titled as Shahid Imran versus The State (2011 SCMR 1614) observed as follows:-

"The considerations for grant of bail and those for cancellation are entirely different. No allegation has been leveled against the petitioner regarding any misuse or abuse of concession of bail by him and even today the complainant has not been able to level any such allegation against the petitioner. It had also not been appreciated by the learned judge in chamber of the Lahore High Court, Lahore that the investigation of this case had already been finalized and a challan had been submitted before the learned trial court and at such stage no useful purpose was likely to be served by cancelling the petitioner's bail. It is trite that bail ought not to be cancelled merely for wreaking vengeance of the complainant party."

Similar observations were made by the august apex court in case reported as Abdul Rasheed Khan versus Zahoor Ahmed Malik (PLD 2011 Supreme Court 210), wherein it was observed as follows:-

"We have been informed that Challan has already been submitted in this case. This Court is generally slow in cancelling an accused person's bail at such a stage of a criminal case. No allegation has been by the petitioner, the state or National Accountability Bureau regarding misuse or abuse of concession of bail."

The Honorable Supreme Court reiterated that the bail cannot be cancelled to wreak vengeance to the complainant party.

9. As stated above supplementary challan was filed on 8.1.2018 wherein respondent no. 1 is an accused in the case. Therefore, no useful purpose shall be served by sending the referred respondent behind bars at this stage. There is no allegation of abuse of concession of bail by respondent No. 1.

10. In view of above, the instant petition is without any merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 02/04/2018.

JUDGE

M. Zaheer Janjua

Approved for Reporting.