

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.122-BC/2020

MST. SUMAIRA BIBI
Versus
MUDASSIR ALTAf BHATTI AND ANOTHER.

Petitioner by: Raja Mohammad Farooq, Advocate.
Respondent No.1 by: Syed Nayyab Hassan Gardezi, Advocate.
State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Hanif, A.S.I.
Date of Hearing: 07.07.2020.

LUBNA SALEEM PERVEZ; J. Through present criminal miscellaneous petition, the petitioner seeks cancellation of bail granted to Respondent No. 1 namely Mudassir Altaf Bhatti, vide order dated 23.12.2019, passed by Judicial Magistrate Sec. 30, (West) Islamabad, in case FIR No. 393/2019, dated 22.11.2019, for offence under section 489-F PPC, registered at Police Station Aabpara, Islamabad.

2. Brief facts, as per record are that the petitioner solemnized Nikkah with Respondent No.1 on 12.07.2019, in consideration of Rs. 1,000,000/- as deferred dower for which Respondent No.1 issued cheque bearing No. 000000101 dated 10.10.2019, drawn on HBL Melody Market, Sector G-6, Islamabad. The respondent also issued cheque bearing No. 000000102 dated 10.10.2019, amounting to Rs. 50,000/-, drawn on the same Branch of HBL, on account of return of loan and another cheque bearing No. 000000103 dated 10.10.2019, for Rs. 60,000/- on account of personal expenses/maintenance. All the three cheques, when presented in the Bank, were dishonored due to insufficient funds, therefore, the petitioner registered the above FIR against her husband/Respondent No.1. Record revealed that the petition for pre-arrest bail filed by Respondent No. 1 was dismissed, however, the post arrest bail was allowed and subsequently sustained by the Additional Sessions Judge, West-

Islamabad, while hearing petition for cancellation of bail. Hence, present criminal miscellaneous petition against order dated 25.01.2020.

3. Learned counsel for the petitioner submitted that order dated 25.01.2020, whereby the petition for cancellation of bail was dismissed is not legally sustainable as the cheque of Rs. 1,000,000/- issued for payment of dower amount was not conditional as observed by the learned Additional Sessions Judge-West, Islamabad; that Respondent No. 1 is a habitual offender and there is another FIR bearing No. 147/2019, dated 11.08.2019, registered against him for offences u/s 420/468/471 PPC, registered at Police Station Margalla, Islamabad; that the learned Courts below instead of forming a tentative view to grant or refuse bail, has gone into deeper appreciation of the facts; that the observations in the orders dated 23.12.2019 & 25.01.2020, would prejudice the case of the prosecution as the observations contained in the said orders regarding conditional cheques *prima facie* decide the whole matter pending in trial; that Respondent No.1, has dishonestly issued the subject cheques, in view of the abnormal matrimonial relations between the parties, as specific date has been mentioned on the cheques; that Respondent No.1 will misuse the concession of bail and the petitioner apprehends threats and blackmailing on his part, and in view of his conduct Respondent No. 1 is not entitled for grant of bail. Learned counsel prayed for acceptance of this bail cancellation petition.

4. Conversely, learned Counsel for Respondent No. 1 supported the Order dated 23.12.2019, whereby Respondent No. 1 was granted bail as well as Order dated 25.01.2020, whereby the bail cancellation petition was dismissed and submitted that the dower of Rs.1,000,000/-, as mentioned in Nikkah Nama, is a deferred dower and according to Section 290 of Mohammadan Law, the deferred dower is payable at the time of dissolution of marriage, by death or divorce; that the petitioner is still a legally wedded wife of Respondent No. 1 and he has filed a suit for conjugal rights in the Civil Court; that since, the

cheques issued in lieu of dower amount without mentioning the date were issued in good faith after arriving at amicable compromise through an agreement supported with an affidavit of Respondent No.1, therefore, question of dishonestly issuing cheques for deferred dower does not arise; that parties to the FIR No. 147/2019, dated 11.09.2019, have arrived at a compromise and, therefore, same cannot be used against Respondent No. 1 for holding him a habitual offender. Learned counsel relied on the principles for grant of bail laid down by the Hon'ble Supreme Court of Pakistan vide judgment re: Tariq Bashir vs. The State (PLD 1995 SC 34). Learned counsel also relied on cases titled as Muhammad Azhar vs. Dilawar (2009 SCMR 1202) and Mian Allah Ditta vs. The State (2013 SCMR 51). Learned counsel, in view of the judgments relied upon by him, prayed for dismissal of present petition.

5. I have heard the arguments of learned Counsel for the parties as well as learned State Counsel and have also perused the police record.

6. Perusal of the record revealed that the petitioner and Respondent No. 1 got married on 12.07.2019, and apparently the domestic disputes between them lead to filing of civil and criminal cases against each other. The present criminal miscellaneous petition has been filed for cancellation of bail granted to the Respondent No. 1, who was arrested in consequence of FIR No. 393/2019, dated 22.11.2019, for offence under section 489-F PPC. Learned counsel for the petitioner contested the grant of bail apprehending the misuse of bail and blackmailing by Respondent No. 1, however, could not cite any instance of influencing the prosecution or threatening the petitioner or her witnesses. The Hon'ble Supreme Court in the famous **Tariq Bashir's case** reported as **PLD 1995 SC 34** has laid down the following principles regarding grant or refusal of bail in bailable and non-bailable offences and has observed as under:-

"It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this

provision of law is that 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 an exception. So the bail will be declined only in extraordinary and exceptional cases, for example--

- (a) *where there is likelihood of abscondence of the accused;*
- (b) *where there is apprehension of the accused tampering with the prosecution evidence;*
- (c) *where there is danger of the offence being repeated if the accused is released on bail; and*
- (d) *where the accused is a previous convict."*

Keeping in view the above said guidelines of the Hon'ble Supreme Court of Pakistan, the record has been examined in the light of facts and circumstances of the case and I am of the view that there is neither any likelihood of abscondence of the accused/Respondent No. 1, nor there is any apprehension of his tampering with the prosecution record and evidence. Moreover, Respondent No. 1 is previously non convict and there is also no apprehension of repetition of the offence. I am also in agreement with the reason of the given by learned Additional Sessions Judge, West-Islamabad, that the grant of bail is not an acquittal of the accused as it is mere transfer of custody of the accused from State to the surety. Moreover, considerations for cancellation of bail are quite distinct from the considerations for grant of bail. Once bail has been granted by a competent Court of law, strong, extra-ordinary circumstances and exceptional grounds are required for its cancellation, whereas, in present case no sufficient material and grounds have been raised nor any illegality has been shown in the impugned order to seek cancellation of bail. Learned counsel for petitioner was also not able to point out any illegality or bias or malafide in the orders of the learned Court's below which for pleading cancellation of bail are to be proved by the petitioner. It has been held by the Hon'ble Supreme Court in judgment re: *The State/Anti-Narcotics vs. Rafiq Ahmad Channa (2010 SCMR 580)* passed in a similar matter has held as under:-

"This is a petition for cancellation of bail. It is settled law that considerations for cancellation of bail are different from the considerations for the grant of bail. The bail can be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for grant of bail or it is patently illegal erroneous, factually incorrect and has resulted in miscarriage of justice. Reference is invited to State v. Khalid Sharif 2006 SCMR 1265 and Ehsan Akbar v. State 2007 SCMR 482."

As such, I find no legal infirmity or irregularity or arbitrariness in the findings of the orders dated 23.12.2019 & 25.01.2020, hence, present criminal miscellaneous application, being devoid of any merit, is hereby **dismissed**.

7. However, it is made clear that all the observations made hereinabove or vide orders dated 23.12.2019 & 25.01.2020, are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

M. Junaid Usman