

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Misc. No. 620-BC/2019

Raja Majid Hussain
Versus
Mazhar Hussain and others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.07.2020	Mr. Adil Aziz Qazi, Advocate for the petitioner. Mr.M. Fahim Akhtar Gill, Advocate alongwith respondent No.1 to 4 in person. Mr. Zohaib Hassan Gondal, State Counsel alongwith Saqib A.S.I and Sultan Mehmood, Sub-Inspector.

Ghulam Azam Qambrani, J.:- The petitioner (Raja Majid Hussain) seeks cancellation of bail granted in favour of respondents No.1 to 4/ accused (hereinafter be called as “**respondents**”), in case F.I.R No. 226, dated 26.08.2019, under Sections 506(ii), 148 & 149 P.P.C, registered at Police Station Bani Gala, Islamabad.

2. Briefly stated facts of the case are that the petitioner/ complainant lodged the instant F.I.R with the allegations that on 26.08.2019 at about 05:30 pm, respondents/ accused persons alongwith others, armed with fire-arm weapons and hatchet, entered into the society of the complainant, while threatening to kill him started firing, they escaped their lives hiding behind the vehicles, hence the above said F.I.R.

3. The respondents/ accused applied for the grant of pre-arrest bail before the learned Additional Sessions Judge-III, Islamabad-East, which was confirmed vide order dated 28.09.2019, hence, the instant petition.

4. Learned counsel for the petitioner submits that respondents are influential persons and belong to land grabber mafia; that they made straight firing at the complainant and hurled death threats to the petitioner and others; that after their release on bail they also misused the concession of bail and extending threats to the petitioner; that the respondents are connected with the offence, therefore, they were not entitled for the grant of pre-arrest bail.

5. On the other hand, learned counsel for the respondents/accused submits that they have been involved malafidely in the instant case with ulterior motive; that no material is available against the petitioner on record; that the challan has already been submitted, charge has been framed on 08.01.2020; that no specific role has been assigned to the respondents; that the accused did not misuse the concession of bail nor they threatened the complainant and his witnesses, in any manner. Further submitted that the respondents were present on their own land and every time, the petitioner party tried to occupied the land of the respondents.

6. Learned State counsel opposed the impugned order contending that the accused Qamar Nisar and Rehmat have not handed over their weapons and submitted that the recovered weapons have not been sent to the Forensic Science Laboratory for their examination; that recovery of axe is yet to be made and requested for cancellation of bail granted to the respondents.

7. Arguments heard, record perused.

8. During the course of argument the Investigation Officer in attendance, who on Court's

query has candidly stated that during the ad-interim bail, the co-accused persons cooperated in the investigation and that accused persons are appearing on each and every date of hearing. The weapons which were handed over by the respondents to the police have not been sent to the Forensic Science Laboratory for obtaining report as to whether that were used during the alleged occurrence or not?

9. It is settled principle of law that considerations for the grant of bail are quite different from the considerations for the cancellation of bail. Once bail has been granted by a competent Court of law, strong and exceptional grounds are required for cancelling the same. In such cases, it is to be seen as to whether order granting bail is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice, whereas in the instant case, the petitioner has failed to establish any such ground. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings. Courts have always been slow to cancel bail already granted as the liberty of a person cannot be curtailed on flimsy grounds. No interference with an order of bail is required to be made unless the order lacks in reasons or is perfunctory in nature.

10. Once bail has been granted, the prosecution should make out strong case for cancellation not by making allegation alone but by giving substantive proof of such allegation. The cancellation of bail is harsh order because it interferes with liberty of an individual hence, it must not be restored to lightly and power to take back in custody is to be exercised with due care and circumspection.

11. Similar observations were made by the august Apex Court in case reported as "Abdul Rasheed Khan v. Zahoor Ahmed Malik" (PLD 2011 S.C. 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 levelled by the petitioner-complainant, the State or National Accountability Bureau regarding misuse or abuse of concession of bail."

12. Considering the case of present respondents/accused for the grant of bail on the above touchstone, I am of the view that the discretion exercised by the learned Additional Sessions Judge-III, Islamabad-East, in granting pre-arrest bail to the respondents, is not arbitrary or against the settled principles of law, hence, cannot be interfered with. There is no evidence that the respondents have tampered with the prosecution evidence or misused the concession of bail. The bail can only be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for the grant of bail. In this regard, reliance is placed on the Judgments titled "The State Vs Khalid Mehmood" [2006 SCMR 1265] and "Ahsan Akbar VsThe State" [2007 SCMR 482].

13. I have also gone through the impugned order dated 28.09.2019, which are based upon legal principles and no illegality has been observed, therefore, requirement of Section 497(5) Cr.P.C is not visible as no perversity, illegality or violation of Court order or tampering with evidence of this case has been established against the respondents. Further the petitioner has also failed to place on record any piece

of evidence to show that the respondents have misused the concession of bail. Therefore, instant petition having no force, is hereby ***dismissed***.

14. However, the observations made hereinabove are meant for disposal of this petition, which shall have no bearing on merits of the case.

~~(GHULAM AZAM QAM RAN~~
JUDGE

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