

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

Crl. Misc. No.121-BC of 2020

Ch.Ibrar Ahmed
Versus
The State & 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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15.07.2020	Mr. Sajjad Haider Malik, Advocate for the petitioner. Mr. Nadeem Ahmed Sheikh, Advocate alongwith respondent No.2 in person. Mr. Zohaib Hassan Gondal, State Counsel alongwith Kamal Sub-Inspector.
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Ghulam Azam Qambrani, J.:- The petitioner (Ch. Ibrar Ahmed S/o Ch. Muhammad Gul Bahar) seeks cancellation of bail granted in favour of accused/ respondent No.2 (hereinafter be called as ***“respondent”***), in case F.I.R No. 470, dated 08.11.2019, offence under Section 489-F P.P.C, registered at Police Station Kohsar, Islamabad.

2. Briefly facts of the case as alleged in the F.I.R are that petitioner/ complainant allegedly invested 42.3 millions in “Konnect Holden (Pvt.) Limited (KHL)” and the respondent/ accused being the Chief Executive of the said company executed an agreement with the petitioner on 18.11.2017 with regard to receiving of the said amount from the petitioner and for return of the same, he issued three cheques, out of which he presented a cheque No.00000123 dated 28.11.2017 amounting to Rs.10,000,000/- (Rupees one crore), in his account situated in HBL, Blue Area, Islamabad, for

encashment which was dishonored due to insufficient amount, hence, the above said FIR.

3. The respondent/ accused applied for the grant of pre-arrest bail before the learned Additional Sessions Judge-VII, Islamabad- West, which was confirmed on 04.02.2020. The petitioner being aggrieved filed the instant petition for cancellation of bail granted to respondent/ accused.

4. Learned counsel for the petitioner, *inter-alia*, contended that the learned trial Court while passing the impugned order has committed material irregularity and failed to appreciate the evidence available on record; that the respondent with malafide intention issued bogus cheque to the petitioner; that the respondent is a habitual criminal who issued a number of cheques to other persons as well which were subsequently dishonored, as such, he was not entitled for concession of the pre-arrest bail; that sufficient evidence was available on record to connect the petitioner with commission of the alleged offence; that no malafide has been established against the petitioner to falsely involve the respondent in the instant case, as such, the impugned order is liable to be recalled.

5. Conversely, learned counsel for the respondent contended that no ground for cancellation of bail is available to the petitioner; that the challan has already been submitted before the learned trial Court. It is further contended that the petitioner admitted that he entered into an agreement with the Konnect Holden (Pvt.) Limited (KHL); that the whole story narrated by the petitioner is baseless and false; that there is nothing on record to show that why the petitioner paid such a huge

amount to the respondent; that the respondent has not issued any cheque to the respondent nor there is any relationship between the parties. Further submitted that the petitioner is continuously harassing the respondent; that the respondent also filed a Writ Petition No.65/ 2020 before this Court against petitioner for causing harassment; that the respondent has not misused the concession of bail. Learned State counsel opposed the impugned order by contending that the investigation of the case has been completed and the challan has been submitted before the learned trial Court on 18.02.2020.

6. Arguments heard; record perused.

7. Perusal of the record reveals that the cheque was dishonored on 30.11.2017, whereas F.I.R was lodged on 08.11.2019, after an inordinate and unexplained delay of about one year and eleven months. There is nothing on record to show that the petitioner has paid any amount to the respondent against which he issued the alleged cheque. Allegedly the petitioner made investment with the Konnect Company. Further, it is the stance of the respondent that he never issued the cheque nor signed any agreement in favour of the petitioner. Perusal of the record further reveals that the respondent has also moved applications against the petitioner before the police authorities prior to registration of the instant F.I.R and nothing is due towards the respondent, whereas, an amount of Rs.70,00,000/- (seventy lac) is receivable from the petitioner.

8. There is no evidence that the respondent has 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 Muhammad Akram Vs. Zahid Iqbal and others(2008 SCMR 1715), "Muzaffar Iqbal Vs Muhammad Imran Aziz and others" (2004 SCMR 231), "The State Vs Khalid Mehmood" [2006 SCMR 1265], "Shahneel Gul and two others vs. The State" (2018 YLR 999) and "Ahsan Akbar Vs The State" [2007 SCMR 482].

9. The considerations for the grant of bail are quite different from the considerations for 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 in the instant case. Further the grant of bail does not mean an acquittal. The learned trial Court is in a position to adjudicate on the guilt or otherwise of the respondent/ accused after evidence is led and analyzed by the learned trial Court and it can also look into and evaluate the malafide from the facts and circumstances of the instant case.

10. So far as the contention of the learned State counsel that similar nature of cases has already been registered against the respondent is concerned, there is no previous record of the respondent to have been convicted, as such, he cannot be treated as hardened criminal and it cannot be a ground to withhold the concession of bail. Reliance in this regard is placed upon the case

reported as "Babar Hussain Vs. The State and another" (2020 SCMR 871) wherein it has been held as under:-

As far as the contention of learned Law Officer that the petitioner is involved in six other criminal cases would not disentitle him from the relief sought for as learned Law Officer frankly conceded that petitioner has not been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Reliance in this regard is placed upon cases titled as "Moundar and others v. The State" (PLD 1990 SC 934) and "Muhammad Rafique v. The State" (1997 SCMR 412)

11. I have also gone through the impugned order dated 04.02.2020, which is 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 prosecution evidence of this case has been established against the respondent, therefore, instant petition is misconceived and the same is hereby **dismissed**.

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

(GHULAM AZAM QAMBRANI)
JUDGE

Rana M. N.