

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.328 of 2019
Labeeb Ur Rehman
Versus
Mansoor Hussain and 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	Ms. Zareen Kanwal, Advocate for the petitioner. Mr. Sajjad Haider Malik, Advocate for respondent No.1. Mr. Sadaqat Ali Jahangir, learned State Counsel. Mr. Murtaza Qamar, S.I., P.S. Golra along with record. Mr. Tanvir Ahmad, A.S.I., P.S. Ramna along with record.	
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Through the instant criminal miscellaneous petition, the petitioner, Labeeb Ur Rehman, seeks the cancellation of bail granted to respondent No.1 (Mansoor Hussain) by the Court of the learned Sessions Judge, Islamabad vide order dated 25.04.2019.

2. On the petitioner's complaint, F.I.R. No.37/2019, dated 15.01.2019 was registered against respondent No.1 under Section 489-F P.P.C. at Police Station Golra Sharif, Islamabad. Respondent No.1 was arrested on 03.04.2019. Vide order dated 25.04.2019 passed by the Court of the learned Sessions Judge, Islamabad, respondent No.1 was granted post arrest bail.

3. Respondent No.1 was accused of having issued a cheque of Rs.81,00,000/- which had got dishonoured on presentation. The petitioner seeks the cancellation of bail granted to respondent No.1 vide above mentioned order dated 25.04.2019.

4. Learned counsel for the petitioner submitted that respondent No.1 was a habitual offender; that there were other F.I.R.s of a similar nature registered against respondent No.1; that respondent No.1 had defrauded respectable members of the society; that after being granted bail, respondent No.1 has shown no inclination to pay the amount which he had taken from the petitioner and against which he had issued the cheque in question; and that respondent No.1 is likely to commit a similar offence if his bail is not cancelled. Learned counsel for the petitioner prayed for the post arrest bail granted to respondent No.1 to be cancelled. In making her submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2018 MLD 273, 2011 MLD 793, 2018 YLR 338, 2018 YLR 1865 and 2011 P.Cr.L.J. 747.

5. On the other hand, learned counsel for respondent No.1 submitted that in the proceedings before the learned Trial Court, a charge has already been framed and the case is at the stage of recording evidence; that respondent No.1 was incarcerated for a period of twenty three days; that the investigation officer had not required respondent No.1 for questioning; that the order dated 25.04.2019, whereby post arrest bail was granted to respondent No.1 did not suffer from any legal infirmity; that an offence under Section 489-F P.P.C. does not fall within the prohibitory clause of Section 497 Cr.P.C.; and that the petitioner has already instituted a suit for recovery under Order XXXVII, C.P.C. against respondent No.1 and that leave to appear and defend has already been granted to

respondent No.1 in the said case. Learned counsel for respondent No.1 prayed for the petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. As mentioned above, respondent No.1 was incarcerated for a period of twenty three days (i.e. from 03.04.2019 to 25.04.2019) before being granted post arrest bail by the Court of the learned Sessions Judge, Islamabad. The offence under Section 489-F P.P.C. carries a sentence of three years, and therefore does not fall within the prohibitory clause of Section 497 Cr.P.C. The learned State Counsel did not dispute that respondent No.1 was no longer required for further investigation.

8. Learned counsel for the petitioner could not convince the Court that respondent No.1 had, in any manner, misused the concession of bail granted to him vide impugned order dated 25.04.2019. The dispute between the petitioner and respondent No.1 is intense and they are also against each other in civil litigation (i.e. suit under Order XXXVII C.P.C.).

9. It is settled principle of law that once discretion has been exercised by the Court of competent jurisdiction for grant of bail, then the same cannot be reversed or recalled unless the same is either perverse or illegal. For cancellation of bail, strong and cogent reasons are required to be furnished which are lacking in the instant case. In case where bail is granted then the grounds which are

essential for cancellation of bail are *inter alia* as follows:-

- (i) *Exceptionally strong grounds such as abuse / misuse of concession of bail;*
- (ii) *Bail can be recalled where the person on bail repeats the offence;*
- (iii) *Hampers the investigation;*
- (iv) *Makes some efforts to tamper with the evidence;*
- (v) *Prosecutes the witnesses;*
- (vi) *Manages to flee away from the country or beyond the control of sureties; and*
- (vii) *Order of bail has been obtained through misrepresentation or suppression of facts.*

10. In the case of Shahid Imran Vs. The State (2011 SCMR 1614), it has been held that the considerations for the grant of bail and those for its cancellation are entirely different and that bail ought not to be cancelled merely for wreaking vengeance of the complainant party. In the case of Riffat Munir Vs. Naveed Zafar (2016 P.Cr.L.J. 464), the Hon'ble Lahore High Court has reiterated the well entrenched principle that when bail has been granted by a Court of competent jurisdiction on the basis of valid reasons, the same cannot be recalled/cancelled unless and until exceptional grounds are established by the prosecution.

11. Undoubtedly, principles for cancellation of bail granted to an accused are entirely different from the grounds and principles for grant of bail. Furthermore, learned counsel for the petitioner has failed to point out any instance showing respondent No.1 has misused the concession of bail or his remaining at large would be a serious threat to the evidence brought on record against him. Therefore, I do not find any material which may warrant justification for the interference in the discretion exercised by the lower Court.

12. The case law relied upon by the learned counsel for the petitioner does not include a single case where the post-arrest bail granted to an accused had been recalled.

13. In the case reported as 2011 MLD 793, the Hon'ble High Court of Sindh had recalled pre-arrest bail granted in a case registered under Section 489-F P.P.C. The said case is distinguishable from the one at hand since the instant case is regarding a petition for the cancellation of post-arrest bail.

14. In the case at hand, learned counsel for the petitioner has not come-up with anything exceptional to convince me to recall the bail granting order. Consequently, the instant petition for cancellation of bail is dismissed. The observations made herein-above are tentative in nature, and will not prejudice the case of either side during trial.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*