

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Misc. No. 673/BC/2019**

Muhammad Abbas

Versus

Mst. Raheela Chaudhry etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(03)	13.11.2019	Barrister Muhammad Hassan Alam and Mr. Mohammad Shoaib Butt, Advocates for the petitioner. Mr. Gulbaz Mushtaq, Advocate alongwith respondents. Ms. Saima Naqvi, State Counsel. Shahzad ASI, Sohaib Pasha, ASI. Parveen Akhtar, HC, P.S Margalla, Islamabad.

**MOHSIN AKHTAR KAYANI J.** Through this criminal miscellaneous, petitioner has prayed for cancellation of pre-arrest bail granted to respondents No. 1 to 3 by learned Additional Sessions Judge (West), Islamabad vide order dated 17.09.2019 in case FIR No.146/2019, dated 10.08.2019, U/s 420,468,471, PPC, P.S Margalla, Islamabad.

3. Brief facts referred in the instant case are that the above referred FIR has been registered on the complaint of present petitioner with the allegation that he has dispute with respondents No. 1 to 3 and FIR No. 363 dated 03.10.2015 U/s 406/34, P.S Ramna, Islamabad has been got registered by him against respondents No. 1 to 3. The complainant has further alleged that Marukh Ali/respondent No.3 in connivance with Mst. Raheela Chaudhry/respondent

No.1 and Kashaan Ali/respondent No.2 as well as Nikah Khawan Qari Muhammad Gul of Jamia masjid Al-Quresh, Main Service Road, Mehra Abadi G-11/2, Islamabad and witnesses namely as Muhammad Hussain, Muhammad Ishfaq, Liaquat Ali have prepared a forged and fictitious Nikahnama, which was not registered in any Union Council and on the basis of said Nikahnama, Marukh Ali claims to be the wife of present petitioner and filed a false and frivolous suit for recovery of Haq Mehr and maintenance before the learned Family Court, Islamabad, whereby obtained ex-parte decree in her favour. The complainant when came to know about the said fraud, has filed application for setting-aside the ex-parte proceedings, which was accepted by the learned Family Court, Islamabad, hence instant FIR has been lodged.

3. Learned counsel for the petitioner contends that respondents No. 1 to 3 have prepared forged and fictitious document/Nikahnama, which has been used by them in the Family Court in the said suit for recovery of maintenance and Haq Mehr and as such respondents in connivance with other witnesses have prepared the forged document/Nikahnama and they have failed to produce the original document of Nikahnama as well as witnesses before the Investigation Officer, whereas learned Court of Additional Sessions Judge have granted the pre-arrest bail to the respondents No. 1 to 3 through the impugned order without adhering to the legal

propositions of law and the impugned order is perverse and illegal.

4. Conversely, learned counsel for respondents No. 1 to 3 contends that as per the allegation of complainant/petitioner, he came to know about the factum of Nikah in the Family Court and the document in question is subjudice before the competent Court having jurisdiction, which could not be considered as an incriminating evidence against present respondents and the subject matter could only be decided by the Family Court and very act of registration of FIR is illegal. He further contends that the learned Additional Sessions Judge has granted the pre-arrest bail while considering the malafide on the part of complainant, who has yet to record his evidence before the Family Court in order to substantiate his plea, therefore, in such circumstances, pre-arrest bail has rightly been granted to the respondents.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that the entire case revolves around the Nikahnama dated 06.06.2014 executed between Muhammad Abbas/petitioner and Marukh Ali/respondent No.3, the said document was used by Marukh Ali in the Family Suit titled as "*Marukh Ali Vs. Muhammad Abbas*" for recovery of maintenance and dower articles and obtained judgment and decree in her favour, which was set-aside and matter is pending before Family Court. The respondent No.3 has taken a specific plea and stance that she has entered into

Nikah with Muhammad Abbas and even the document brought on record by the respondent No.3 is forged and fictitious, whereby the original Nikahnama was not produced before Investigation Officer, despite the fact that the same was referred in the Family suit as Exh.P4, which was returned by the Family Court vide order dated 13.03.2018.

7. In addition to above, the petitioner has also filed a suit for jactitation of marriage titled "Muhammad Abbas Vs. Marukh Ali etc.", which is also pending before Family Court and as such question of execution of Nikah is yet to be determined by the Family Court and the requirement of pre-arrest bail is visible from the record, which was rightly appreciated by the learned Additional Sessions Judge in the impugned order. The petitioner has failed to point out any perversity, illegality in the impugned order and even respondents No. 1 to 3 have not abused the process of law nor violated the terms and conditions of the bail, even not tempered with the evidence of this case, therefore, all the requirements of cancellation of bail in terms of Section 497(5) Cr.P.C are lacking in this case.

8. As for as submissions of fake document i.e. Nikahnama before the Family Court in the judicial proceedings is concerned, it is settled law that any forged document if submitted before the judicial proceedings, the matter should have been settled through the proceedings U/s 476 Cr.P.C read with 195 Cr.P.C and the findings of learned Family Court would be considered in the criminal case and in

these circumstances respondents No. 1 to 3 are entitled for grant of pre-arrest bail. It is well settled law that parameters for cancellation of bail are different from parameters for grant of bail. Bail granting order can be recalled if the same is perverse, illegal or there is misuse of bail by the accused person, but in the instant matter all these ingredients are missing.

8. In view of above, the pre-arrest granted to the respondents No. 1 to 3 could not be recalled, therefore, instant criminal miscellaneous petition is misconceived and same is hereby **dismissed**.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

by Ramzan