

ORDER SHEET.

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

Criminal Misc. No. 403/BC/2019.

The State through Advocate General, ICT

Versus

Raja Shakeel Abbasi, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.06.2019.	Malik Awais Haider, State Counsel. Azhar Hussain Shah, DSP (Legal), Islamabad. Abdul Hameed, S.I.

Through this CrI. Misc. bail cancellation petition, the petitioner Advocate General (ICT), Islamabad has prayed for cancellation of pre-arrest bail granted to respondents No.1 & 2 vide order dated 27.03.2019, passed by learned Additional Sessions Judge (West), Islamabad in case FIR No.67, dated 20.03.2019, U/S 353, 186, 147, 149, 188, 341, 109, 337-F(i), 337-A(i), 152, 153, 153-A PPC, P.S. Secretariat, Islamabad.

2. Learned State Counsel contends that respondents No.1 & 2 have been granted pre-arrest bail in case FIR No.67, dated 20.03.2019, U/S 353, 186, 147, 149, 188, 341, 109, 337-F(i), 337-A(i), 152, 153, 153-A PPC, P.S. Secretariat, Islamabad without considering the legal requirements for grant of pre-arrest bail; that respondents No.1 & 2 are participant of unlawful assembly who have chanted slogans against NAB and violated the orders of District Magistrate, passed U/S 144 Cr.P.C.

3. Arguments heard, record perused.
4. Perusal of record reveals that respondents No.1 & 2 have been nominated as accused in case FIR No.67, dated 20.03.2019, U/S 353, 186, 147, 149, 188, 341, 109, 337-F(i), 337-A(i), 152, 153, 153-A PPC, P.S. Secretariat, Islamabad with the allegations that both these respondents belong to Pakistan Peoples Party and they have managed the demonstration without due permission and have raised slogans against NAB as well as Government of Pakistan and have also deterred the police officials from performance of their official duty.
5. Learned State Counsel has been confronted regarding the present status of the case, whereby he contends that twenty individuals have been arrested on the day of alleged occurrence and sent to judicial custody, whereas respondents No.1 & 2 fled away from the scene and have been granted pre-arrest bail by the Court of learned Additional Sessions Judge (West), Islamabad vide order dated 27.03.2019.
6. The perusal of record reveals that respondents No.1 & 2 have not been attributed with role of causing any injury to any individuals and even otherwise all the offences are bailable except Section 153-A PPC. Even otherwise, all the offences do not fall within the prohibitory clause of Section 497 Cr.P.C. Even no recovery is required to be effected from respondents No.1 & 2 and twenty co-accused have already been granted post-arrest bail by the Courts of competent

jurisdiction. The photographic evidence appended with this file does not suggest the presence of respondents No.1 & 2 on the alleged day of occurrence, nor it is the case of petitioner that respondents No.1 & 2 were present in the photographs appended with this petition.

7. It is trite law that when principal accused have already been granted post-arrest bail, the arrest of respondents No.1 & 2 is just an exercise especially when no recovery is required to be effected. Both the respondents are members of Islamabad Bar Association and are practicing lawyers.

8. In this backdrop the arrest of respondents will certainly caused humiliation at the hands of police, therefore, in such eventuality while relying upon 1986 SCMR 1380 (Muhammad Ramzan Vs. Zaffarullah) no useful purpose would be achieved by recalling the pre-arrest bail granted to respondents No.1 & 2. The question of further inquiry is apparent on record and investigation has already been completed. Even otherwise, respondents No.1 & 2 have not violated the previous bail orders granted in their favour.

9. Petitioner has filed the instant Crl. Misc. Petition under Section 497(5) Cr.P.C. The provisions of Section 497 (5) Cr.P.C. are not punitive in nature and there is no compulsion for canceling the bail, unless the bail granting order is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice or where the accused is found to be making efforts to

misuse the concession of the bail. Bail granting order could be recalled, if same was absurd, fanciful, illegal and arbitrary. Furthermore, if the Court concerned had erred in exercise of its discretion in allowing bail. Once a bail was granted by a Court of competent jurisdiction it must be shown satisfactorily for its cancellation that the discretion exercised by the said Court was either perverse or violative of fundamental principles. As such, the impugned order does not suffer from any legal infirmity.

10. Moreover, considerations for cancellation of bail are different from those for grant of bail and learned State Counsel has failed to point out any consideration which calls for cancellation of bail granted to respondents No.1 & 2. Reliance in this regard is placed upon the judgment of Hon'ble Supreme Court of Pakistan reported as 2010 SCMR 580 (The State/Anti-Narcotic through Director General Vs. Rafiq Ahmad Channa), wherein it was held that:-

*---S. 497(5)---Cancellation of bail---Principles---
Considerations for cancellation of bail are different from those for grant of bail---Bail can be cancelled, if the order on the face of it is perverse, patently illegal, erroneous, factually incorrect resulting in miscarriage of justice or has been passed in violation of the principles for grant of bail.*

11. Keeping in view the above background, instant petition is misconceived and the same is hereby **dismissed in limine.**

(MOHSIN AKHTAR KAYANI)
JUDGE