

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.372-BC/2019

Zamurd Khan
Versus
Mirza Muhammad Ishaq Khan etc

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.10.2019	Sardar Abdur Raziq Khan, Advocate for the petitioner Mr. Moazzam Ali Sheikh, Advocate for respondent No.1 Mr. Sadaqat Ali Jehangir, learned State Counsel along with A. Sattar Baig, S.I.

Through the instant petition under Section 497 (5) Cr.P.C., the petitioner/ complainant seeks cancellation of pre-arrest bail granted to the accused/respondent No.1 vide order dated 24.05.2019 passed by learned Additional Sessions Judge-VII, Islamabad-West.

2. The relevant facts of the case are that on the complaint of the petitioner (Zamurad Khan), FIR No.141, dated 05.05.2019, under Sections 420,467,468 and 471 P.P.C. was registered at Police Station Ramna, Islamabad.

3. It was alleged in the complaint that accused/respondent No. 1 (Mirza Muhammad Ishaq) falsely represented himself to be the owner of land measuring 16 *Kanals* situated in *Mouza Sirg-Salar, Tehsil Attock* and received an amount of Rs. 52,00,000/- from the complainant as sale consideration. It is further alleged that a sale agreement was executed between complainant and the respondent No.1 after the latter showed forged title documents/*fards* with respect to the said land. Allegedly the accused failed to get the land transferred in favor of the complainant. Upon inquiry from the concerned land revenue office, it

was discovered that the computerized *fards* provided by the accused are fake.

4. Learned counsel for the petitioner submitted that the impugned order for granting the pre-arrest bail to respondent No.1 has been passed without hearing the counsel for the complainant which caused a miscarriage of justice; that the mandatory requirements for grant of pre-arrest bail i.e. prima facie no case, abuse of process of law, mala fide of police, unjustified harassment or humiliation, were missing in the case; that principles for grant of pre-arrest bail have been overlooked; that initially the case was cancelled but during the inquiry on the application of complainant, the respondent was found guilty; and that learned Court ignored that offense under section 467 P.P.C. falls under prohibitory clause of section 497 Cr.P.C. Learned counsel prayed for the petition to be allowed and bail granted to the respondent No.1 be recalled.

5. In support of his contentions, learned counsel placed reliance in cases of "Rana Abdul Khaliq Vs. The State"(2019 SCMR 1129), Muhammad Ilyas Vs. Shahid Ullah etc (PLD 2009 SC 446), "Murad Khan Vs. Fazal-e-Subhan and another (PLD 1983 SC 82), "Muhammad Ramzan Vs. The State"(2007 PCr.LJ 980 Lahore), "Noor Muhammad Khan Vs. The State" (2005 PCrLJ 1025 Lahore) and "Sakhawat Ali Vs. Khalid Mahmood etc"(PLD 1994 Lahore 377).

6. On the other hand, learned counsel for respondent No. 1 opposed the above submissions and submitted that the respondent No.1 has been involved in a false case; that the sale agreement produced by the complainant is forged; that the complainant has no privity of contract with the accused; that the complainant forged the contract

document by inserting his name as the third witness; that the respondent No.1 already transferred the land in question to Muhammad Ikram a representative of buyer Muhammad Fiaz; that accused is owner of land which was purchased through attorney in the name of his nephew Zulifqar; that he never had any contact with the complainant and did not show or give him fake *fard arazi* as alleged in the complaint; that no offense is made out against the accused/respondent No.1; that the complainant is cousin/brother-in-law of Asghar Ali Patwari against whom respondent No.1 lodged FIR dated 22.09.2018 at police station Attock City; that investigation officer submitted cancellation report and recommended proceedings under section 182 P.P.C.; that S.P. Investigation Islamabad converse to earlier inquiry suo moto held another inquiry wherein he recommended submission of report under section 173 Cr.P.C; and that the accused/respondent filed a constitutional petition for quashment of FIR which is *sub-judice* before this Court.

7. Learned counsel for respondent No. 1 further submitted that allegation against the accused is at the most of civil nature; that the land as well as the alleged forged *fards*/documents pertain to District *Attock*; that accused is retired government servant aged more than seventy years; that the impugned order having been passed on correct premises does not call for interference; that jurisdiction to grant pre-arrest bail is wider; that under section 403 Cr.P.C. prosecution is mainly represented by the learned State Counsel; and that bail once granted cannot be recalled except on parameters laid down

under Section 497(5) Cr.P.C. Learned counsel prayed for the petition to be dismissed.

8. Learned State Counsel also stood behind the impugned order. He submitted that the complainant is not party in the agreement; and that the transaction is multifaceted which requires further inquiry.

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

10. Perusal of the bail confirmation order dated 24.05.2019 passed by the learned Additional Sessions Judge shows that the learned Court taken into consideration the version of defence in depth which does not conform to the principles of judicious assessment of material on record at pre-arrest bail stage. However, it is settled principle that parameters for grant of bail and cancellation of bail are entirely different and a bail cannot be cancelled where the bail granting order is not patently illegal, arbitrary or perverse and the accused has not repeated the offence or not violated the conditions of bail.

11. The bare perusal of FIR shows that the alleged occurrence took place on 25.11.2018 but the complaint was lodged after unexplained delay of more than five months. *Malafide* of the prosecution alleged by the accused is that this case has been registered as a counterblast to the FIR lodged by him against the cousin of the complainant at police station Attock City. *Ex facie* a cancellation report was initially prepared by the Investigation Officer in the present case but subsequently, the higher police authorities after an inquiry directed the I.O. to submit report under section 173 Cr.P.C. before the trial Court.

12. Moreover, the complainant in support of his

allegation relies on agreement to sell dated 25.11.2018, wherein, *prima facie*, the complainant is not a party but instead one Muhammad Fiaz is the buyer. It is no one's case that accused is not cooperating with the investigation or is misusing and violating concession of bail in any manner. The accused is a retired government officer and a person of old age (i.e. more than seventy three years). These features make the case of prosecution as one of further inquiry and the bail granting order cannot be considered patently illegal, arbitrary or perverse. In case law reported as 2011 SCMR 1614, the Hon'ble Supreme Court held as follows:-

"It has pertinently been noticed by us that the learned Judge-in-Chamber of the Lahore High Court, Lahore had cancelled the petitioner's bail granted to him earlier by the learned Additional Sessions Judge, Malikwal, District Mandi Baha-ud-Din without appreciating that considerations for grant of bail and those for its cancellation are entirely different. No allegation had been levelled against the petitioner regarding any misuse or abuse of the concession of bail by him and even today the complainant has not been able to level any such allegation against the petitioner. It had also not been appreciated by the learned Judge-in-Chamber of the Lahore High Court, Lahore that the investigation of this case had already been finalized and a Challan had been submitted before the learned trial Court and at such a stage no useful purpose was likely to be served by cancelling the petitioner's bail. It is trite law that bail ought not to be cancelled merely for wreaking vengeance of the-complainant party."

13. As far as the ground that respondent No.1 was admitted to bail without providing opportunity of hearing to the learned counsel for complainant is concerned, admittedly the case was kept in waiting and apart from the learned state counsel the associate counsel for the complainant was also present, therefore, it cannot be said that fair opportunity of hearing was not afforded to the complainant while confirming pre-arrest bail

granted to the respondent No.1.

14. In view of above tentative assessment, present petition is devoid of merits. Therefore, the same is dismissed. Learned trial Court is directed to expeditiously decide the case according to law.

(MIANGUL HASSAN AURANGZEB)
JUDGE

M.A.Baig*