

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

Crl. Misc. No.727-BC of 2019

Abid Hussain Mir
Versus
Naseem Khan 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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25.09.2020 Sheikh Junaid Nadeem, Advocate for the petitioner.
Raja Rizwan Abbasi, Advocate for respondent No.1 in Crl. Misc. No.727/2019 and for respondent No.1 to 11 in Crl. Misc No.728/ 2019.
Mr. Hammad Saeed Dar, State Counsel with Alamgir- S.I and Ishaque- A.S.I.

Ghulam Azam Qambrani, J.:- This common order shall decide the Criminal Miscellaneous Bail Cancellations No.728 & 727 of 2019, arising out of the same F.I.R.

2. The petitioner (Abid Hussain Mir) seeks cancellation of bails granted in favour of accused/ respondents No.1 to 11 in Criminal Miscellaneous No.728/2019 and respondent No.1 in Criminal Miscellaneous No.727/2019 (hereinafter be called as“**respondents**”), in case F.I.R No.222, dated 23.05.2019, offence under Sections 395/412 P.P.C, registered at Police Station Tarnol, Islamabad.

3. Briefly stated facts of the case are that the petitioner lodged above-mentioned F.I.R against the respondents/ accused with the allegation that he is settled in Singapore for the past four (04) decades. He deals in the business of carpets throughout the world. It was alleged that on 17.03.2019, he sent 584 carpets to Pakistan. On 15.04.2019, after clearance

of the custom duty at Karachi, were booked for Islamabad on 20.04.2019. It has been further narrated that on 24.04.2019, the respondent/accused, Naseem Khan, received all the carpets. It was mentioned that 150 out of 584 carpets were of some other persons. On 03.05.2019, he alongwith others when reached at Sara-e-Kharboza, Tarnol at the Haveli of respondent, Muhammad Naseem, he found all the carpets there. He handed over 150 carpets to other owners. It was further alleged that at that moment the respondents/accused aimed their weapons to him and directed to return the carpets otherwise, he would be killed. The petitioner, to save his life, handed over all the carpets to the respondents. In this manner, the respondents/accused persons forcibly removed the carpets and looted him.

4. Learned counsel for the petitioner, *inter-alia*, contended that respondents are misusing the concession of bail by extending threats to the petitioner. Further averred that impugned order dated 15.07.2019 is result of non-reading and misreading of the record, based on surmises and conjectures and is against the law and facts of the case, hence, is liable to be recalled and further contended that the respondent, Jamal Khan, was granted pre-arrest bail contrary to the facts and law and lastly urged for acceptance of instant petitions.

5. Conversely, learned counsel for the respondents contended that the respondents have been involved in the instant case with mala fide intention and ulterior motive just to harass and humiliate them; that the respondents were having business relations with the petitioner for the past 40 years; that the petitioner himself sent the carpets on

the name of respondent/ accused Naseem Khan, who obtained the carpets through bilty on his name; that as per F.I.R, no overt act is attributed to the respondents; that no incriminating evidence is available on record against the respondents, therefore, the learned Sessions Judge, Islamabad-West, has rightly confirmed the bail of the respondent, Jamal Khan. The learned State counsel submitted that the investigation has been completed and the challan has already been submitted before the learned trial Court and opposed the impugned order.

6. Arguments heard, record perused.

7. Perusal of the record reveals that admittedly, there was a business transaction in between the parties, 584carpets were sent to the respondent,Naseem khan, who received the same through bilty. The learned counsel for the petitioner argued that the respondents are extending threats to the petitioner and pressurizing him for withdrawal of the case. when confronted that any application was made to the learned trial Court about extending threats by the respondent, the reply was in the negative.

8. There is no evidence that the respondents have 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 AkramVs. ZahidIqbal and others(**2008 SCMR 1715**), "MuzaffarIqbalVs 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 the 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 into miscarriage of justice whereas, the petitioner has failed to establish any such ground, in the instant case.

10. I have also gone through the impugned order dated 15.07.2019, 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 respondents, therefore, the Criminal Miscellaneous No.727 & 728 of 2019 being misconceived are hereby **dismissed**.

11. 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. Ift.