

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.2020/BC/2010,
Sohail Anjum Versus Zulfiqar Etc.

Date of Hearing: - **28th February, 2011.**
For the Petitioner/Complainant: - ***Qazi Adil Aziz, Advocate.***
For Respondent No.1/Accused: - ***Syed Nayyab Hussain Gardezi, Adv.***
For State: - ***Mr. Shabbir Ahmad Abbasi,***
Standing Counsel.

MUHAMMAD ANWAR KHAN KASI, J:- *The*
cancellation of bail of respondent No.1 has been sought on
the grounds that he is specifically nominated by the PWs
Yasir Mehmood & Qamar Shahzad with a specific role of
conspiracy and the impugned order dated 16-10-2010 has
been passed without appreciating the material on record.

2- Learned counsel for the petitioner contends
that the abetment of the accused for the commission of
offence is established and he has also misused the
concession of bail by advancing threats after his release
on bail and in this regard a proper report was lodged on
14-11-2010 at PS Sehala, Islamabad. It is further
contended that the transcript of cell-phone record
confirms the fact that the accused had been in contact
with the main accused Nasir Mehmood, who is brother in
law of the present accused from midnight till 07:00 am
while the occurrence took place at 06:30 am, which shows
that he is also involved in the commission of offence and
since the main accused Nasir Mehmood is at large, the



respondent No.1 was not entitled to the concession of bail. In support of his contentions, the learned counsel relied upon case law reported in PLD 2001 Lahore 123, which is on the point of abetment and hold that abetment in the offence of murder is as much serious as that of murder and it cannot be treated lightly.

3- *Learned Standing Counsel supported the petition by adopting the arguments of learned counsel for the petitioner. It was his contention that the evidence of conspiracy and abetment can be indirect or circumstantial and each case is to be examined in the light of its peculiar circumstances.*

4- *On the other hand, learned counsel for respondent No.1/accused relying upon case laws reported in 2010 SCMR 580, 2004 SCMR 1160, 2007 SCMR 482, 2008 P Cr. LJ 1565 & 2004 SCMR 231 controverted the arguments by stating that there is no direct evidence against the accused/respondent No.1. Neither he is nominated in the FIR nor did any recovery was effected from him. Cell-phone record in the absence of taped voices can be of no legal value in absence of any expert opinion. He further submitted that the alleged eyewitnesses Yasir Mehmood and Qamar Shahzad are known to the parties and, therefore, they should have mentioned the name of respondent No.1 in the very beginning, thus their statements are not credible. According to him, the only fault of the respondent is that he is brother in law of the main accused, who is absconding and for this very reason he has been roped in this case just to exert pressure.*



5- *Heard & record perused.*

6- *According to the allegation, the petitioner's cousin namely Raja Zahoor Inspector was brutally murdered by Nasir Mehmood & Tehsin, while the complainant was also fired at, but was saved on 17-8-2010 at 08:20 am at Japan Road, Islamabad. It is further alleged that the murder was committed on the abetment of Fayyaz Ahmad.*

7- *At a later stage, the charge of abetment was also leveled against the respondent No.1 through the statements of PWs Qamar Shahzad & Yasir Mehmood.*

8- *Admittedly, there is no mention of any name or role of present respondent No.1 in the FIR of the incident. It is also evident from record that nothing was recovered from him and the learned Additional Sessions Judge, Islamabad, has rightly exercised discretion by granting the concession of bail to him as none can be deprived of liberty without sound reasoning and justification.*

9- *It has been held time and again that a bail granted wrongly can be cured by punishing the accused after the trial if his guilt is proved but there cannot be any compensation if a bail is wrongly refused. It is also a principle laid down by the superior courts that the courts should be reluctant to cancel the bail as the discretion exercised in favour of the accused cannot be interfered with unless there are strong and exceptional grounds warranting interference because considerations for*

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cancellation of bail and grant of bail are altogether different.

10- *Be that as it may, the conclusion of trial would establish the guilt of the respondent No.1 and at this stage the sifting of chaff from the grain would not be legally justified as this discussion may prejudice the trial of the case.*

11- *Viewing the above, the instant petition stands dismissed.*

MUHAMMAD ANWAR KHAN KASI
JUDGE

Announced in Open Court on this 2nd day of March, 2011.

JUDGE

M. Sohail

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*Blue slip added
may issue?
Mugz
Assued 02-03-11.
Dated:- 11-03-11.*