

**ORDER SHEET.**

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

Criminal Misc: No.205-BC of 2013

Adnan Tariq  
versus  
Zahid Hussain, 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>
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25.02.2014	Ch. Abdul Aziz, Advocate for petitioner. Ch.Zahoor Hussain, Advocate for respondents No.1 & 2. Mr. Jahangir Khan Jadoon, Standing Counsel alongwith Abdul Sattar SI.
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Through the instant petition the petitioner seeks cancellation of pre-arrest bail granted to the accused/respondents No.1 and 2 by the learned trial court vide order dated 23.1.2013 in a private complaint filed under section 302/34, 109 PPC.

2. The petitioner/complainant is seeking cancellation of bail granted to respondents No.1 & 2. The allegation against the respondent No.1 as levelled is of instigation of murder the father of complainant while firing at him was alleged against respondent No.2 who de-camped from the scene of incident.

3. Both the respondents were kept in column No.2 of challan by submitting final report after completion of investigation. Private complaint was submitted against them. Both the respondents obtained pre-arrest bail from the Court vide order

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dated 23.1.2013 on the ground that case of respondents fall under section 497(2) Cr.PC being a case of further inquiry. The view was formed on the basis of opinion of police declaring both of them as innocent and were no more required for investigation. The Court, therefore, with such findings observed that it would be a futility to detain the accused in jail. The petitioners therefore, challenged the said order seeking cancellation of bail granted to the accused. Incident allegedly occurred on 05.08.2011 at 01:20 hours, FIR was lodged on the very same day at 4:15 hour with P.S Koral, Islamabad under section 302/109/34 PPC.

4. Learned counsel for the petitioner while referring various documents appended with this petition has mainly emphasized that the order passed by the Court below sufferers from factual and legal infirmities. Learned trial court which granting bail ignored the brutality of accused at the time of commission of offence. MLC shows multiple fractures inflicted upon his body. Prior to the incident, deceased approached the police but local police failed to provide protection though efforts made by the complainant party. Call data secured by police during investigation supports the version set forth in the FIR. The trial court has only considered

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the cell phone data whereas over-whelming evidence available on record was ignored to connect Raja Zahid Hussain with the commission of offence. The report of SHO Konjah pre-informed the concerned police about the commission of instant offence was also ignored. Respondent/accused Sahrafat was involved in conspiracy regarding cases registered at P.S Konjah, Gujrat. Old enmity exists between the parties.

5. Learned counsel for respondents No.1 & 2 argued that on the day of incident, accused Zahid was available in Lal Masjid offering Jumma Prayer. To confirm his presence, at Lal Masjid four witnesses have been examined during the course of investigation. On application moved by the complainant party, investigation was transferred on their behest, later on, new IO agreed with the earlier investigation. Then again on an application given to DSP by the complainant party, the opinion of IO was remained same. Finally, SP (Investigation) also declared the accused innocent. SHO Konjah of Gujrat has not been cited as PW by the complainant party. Direct complaint was filed to complete the deficit aspects. It has been argued that on the basis of enmity, accused have been implicated falsely. It is a double edge weapon simultaneously could be

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considered for false implication. The case of complainant is based upon conjectures and surmises. The bail granted by the court of competent jurisdiction needs not to be interfered with. The allegation of mere firing is not supported by any other material. Neither incriminating recovered nor the empties from the place where respondent No.2 Sharafat had allegedly fired. The bail can only be cancelled unless it is established that order passed by the Court concerned is patently illegal and perverse, no allegation of misuse of concession of bail or tempering with the prosecution evidence is argued.

6. The Standing Counsel strongly supported the arguments advanced by learned counsel for the respondents No. 1 & 2. Reliance is placed on 2010 PCr.LJ 1648.

7. I have carefully considered the arguments advanced by both the parties, perused the record as well as order passed by learned Additional Sessions Judge (East) Islamabad and the referred case laws.

8. From the perusal of record, it appears that learned trial court has considered all the factual and legal aspects while observing that Zahid Hussain is charged under section 109 PPC. To prove such allegation, strong and cogent evidence is required.

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Merely previous enmity is not a conclusive proof of his involvement. The cell phone call record wherefrom call by accused/petitioner to one of witness Muhammad Safeer needs evidence to prove. The data of phone call did not prove the conversation but merely on the basis of such call data, if available, same cannot be led to draw inference that the said call was made to threaten PW Safeer. Both the accused since have been declared innocent, therefore private complaint was lodged. Pre-arrest bail was granted by the court concerned after considering all the factual and legal aspects. The role of firing with 30 bore pistol was assigned to Sharafat showing his presence at some distance from place of incident. As a result of such firing no injury was caused to anyone including the deceased. The complainant and PWs failed to establish role attributed to the accused. No recovery was affected during the course of investigation. The points raised by learned counsel for the petitioner need further inquiry into the guilt of accused which could only be determined at the trial after examining the witnesses.

9 Basic principle is bail not jail. The accused once granted bail by the court of competent jurisdiction requires exceptional grounds for cancelation which

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are lacking in this case. Otherwise deeper appreciation is not allowed at bail stage. The trial is going to commence in near future. Therefore, at this verge, forming opinion in this regard may prejudice the case of either party.

10. Therefore, through the petition for bail cancellation, the petitioners have failed to establish role attributed to the accused on the basis of material placed before the Court. Same is lacking with exceptional grounds for cancellation of bail. Therefore, petition for cancellation of bail is declined.

**(NOOR-UL-HAQ N. QURESHI)**  
**JUDGE**

Imran

Announced in open Court on 03.2014.

**JUDGE**