

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Revision No. 94/2019

Alamgir Khan

Versus

The State, etc.

Petitioner by, Mr. Sajjad Haider Malik, Advocate.

Respondents by, Ms. Saadia Noreen Malik, State Counsel.
Ch. Bilal Ahmed Mahaar, Advocate.
Sadheer Abbasi, ASI, P.S. Bhara Kahu, Islamabad.
Yarzamin/respondent No.2 in person.

Date of Decision, 04.03.2020.

MOHSIN AKHTAR KAYANI, J. Through this criminal revision, the petitioner has assailed the order dated 21.09.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby petition for cancellation of bail granted to respondent No.2, filed by the petitioner was dismissed. The petitioner has also assailed the order dated 07.08.2019, passed by learned Duty/Judicial Magistrate Section-30 (East), Islamabad, whereby post arrest bail was granted to respondent No.2 in case FIR No.272, dated 01.07.2019, U/S 395 PPC, P.S. Bhara Kahu, Islamabad.

2. Learned counsel for the petitioner contends that petitioner has got lodged the FIR No.272, dated 01.07.2019, U/S 395 PPC, P.S. Bhara Kahu, Islamabad with the

allegation that on 07.07.2019 he was on duty when dacoity was committed in his house and accused persons have snatched Rs.16,70,000/-, 07 tola gold ornaments, I.D cards, cheques and precious stones on gunpoint from women folks of the house by four unknown persons; that after registration of criminal case respondent No.2 has been nominated, who has allegedly arranged the entire gang for commission of the said offence and respondent No.2 pointed out the house of petitioner to other gang members who have committed the armed dacoity; that respondent No.2 was granted post-arrest bail vide order dated 07.08.2019 by the Judicial Magistrate, Section 30 (East), Islamabad mainly on the ground that he has been nominated by other co-accused persons and he was not present at the scene of occurrence but the said order is contrary to record and against the law; that he has filed application for cancellation of post-arrest bail which was also dismissed by learned Additional Sessions Judge (East), Islamabad without considering the record and as such both the Courts below have not applied the true sense of law as respondent No.2 is the master mind of the entire crime and due to the illegal orders passed by the trial Court other co-accused have also granted post-arrest bail.

3. Conversely, learned counsel for respondent No.2 contends that respondent No.2 was not nominated in the FIR nor any recovery has been effected from him and he was merely nominated on the statement of co-accused, which has no legal value and trial Court has rightly passed the order.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that respondent No.2 was involved in criminal case FIR No.272, dated 01.07.2019, U/S 395 PPC, P.S. Bhara Kahu, Islamabad registered on the complaint of petitioner, whereby respondent No.2 was granted post-arrest bail mainly on the ground that he was not nominated in the FIR and no recovery has been effected from him vide order dated 07.08.2019, however, petitioner feeling aggrieved with the said order filed cancellation of post-arrest bail before learned Additional Sessions Judge (East), Islamabad, who also dismissed the same vide order dated 21.09.2019, as a result whereof, instant criminal revision has been filed mainly on the ground that both the Courts below have not appreciated the law on the subject.

6. I have considered the entire proposition from the diverse angle and it appears that respondent No.2 was arrested on 23.07.2019 and was granted post-arrest bail on 07.08.2019 and even challan has been submitted in the Court on 18.08.2019, therefore, at this stage the prayer for cancellation of post-arrest bail cannot be acceded to especially when nothing has been recovered from respondent No.2, nor he was present at the scene of occurrence, however, the issue relating to his presence at the scene of crime will be justified during the course of evidence in trial, whereas the prosecution alleges that he is master mind of entire case and on his planning, dacoity was committed in the house of present petitioner with the help of other co-accused who have also been granted post-arrest bail after passing of impugned order in favour of respondent No.2. In this backdrop the role of other accused have to be seen independently by the Court concerned if petitioner filed any such petition for

cancellation of post-arrest bail, however, when he was confronted with the said proposition he conceded that he has only filed cancellation of post-arrest bail of respondent No.2 at this stage.

7. Record further reflects that all the accused persons are appearing before the trial Court and as such there is no allegation of misuse of concession of bail. Moreover, the bail granting order can be recalled only when it is shown satisfactorily that discretion exercised by the court concerned was perverse, illegal and the accused is alleged to have misused the bail granted to him. In this case, all these ingredients are missing, therefore, instant criminal revision is pre-mature and no maintainable, hence, the same is hereby dismissed. However, observations made hereinabove are tentative in nature and shall have no effect on the merits of the case. Even fresh petition for cancellation of post-arrest bail can be filed by petitioner, if new circumstances emerge on record.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid