

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

Criminal Misc. No. 1094-BC of 2021

Basharat Hussain.

Versus

Azhar Mehmood and 02 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(03)	13.01.2022	Raja Nisar Ul Haq Abbasi, Advocate for the petitioner. Hafiz Ghulam Afzaal Raja, Advocate for the accused alongwith respondent No.1. Mr. Muhammad Mujahid, State Counsel. Shair Ahmed Khan, Inspector.

Through the instant petition, the petitioner seeks cancellation of post-arrest bail granted to respondent No.1 vide order dated 14.10.2021, passed by learned Additional Sessions Judge-III, East-Islamabad, in case FIR No. 637, dated 13.07.2021, offences under Section 302, 324, 337-A(iii), 334/34, P.P.C, registered at Police Station Koral, Islamabad.

02. It is alleged that complainant alongwith his father and brother was

travelling in a car, some unknown persons made direct firing which hit father and brother of the complainant. Father of complainant succumbed to injuries, hence the instant FIR.

03. Learned counsel for the petitioner, *inter-alia*, contends that sufficient evidence is available against respondent No.1 / accused; he was not entitled for grant of bail after arrest as the offence entails the capital punishment, hence his bail after arrest is liable to be cancelled.

04. Conversely, learned counsel for respondent No.1 has controverted the arguments advanced by learned counsel for the petitioner and stated that respondent No.1 is not nominated in the FIR; no evidence is available against him and has prayed for dismissal of instant petition for cancellation of bail after arrest.

05. Arguments advanced by learned counsel for the parties have been heard

and record has been perused with their able assistance.

06. Respondent No.1 / accused is not nominated in the FIR; the complainant has implicated him in a supplementary statement which was recorded on 28.08.2021, i.e. after the delay of one month and 20 days. It is pertinent to mention here that the complainant is real uncle / chacha of respondent No.1 / accused.

07. Complainant has implicated his real brother namely Tariq Mehmood and son of his real brother / respondent No.1 as accused of committing murder of brother of complainant and grandfather of respondent No.1/accused.

08. No plausible justification has been given that why the complainant has not nominated his real brother and nephew as accused in the FIR, rather nominated them in supplementary statement that too after the delay of one month and 20

days.

09. Respondent No.1 / accused was granted bail after arrest by the Court of learned Additional Sessions Judge-III, (East) Islamabad. Principles for grant of bail and its cancellation are entirely different. Reliance is placed on a case titled as "**Sami Ullah and another Vs. Laiq Zada and another**" (2020 SCMR 1115).

10. Ordinarily the superior Courts are reluctant to interfere into the order extending concession of bail; rather they have shown reluctance to intervene in such like matters. The rationale behind is that once concession of bail is granted by a Court of competent jurisdiction then very strong and exceptional grounds would be required to hamper with the concession extended to a person who is otherwise clothed with free life, any contrary action of the court would be synonymous to curtailing the liberty of

such person, which otherwise is a precious right guaranteed under the Constitution of the country.

11. It has also been laid down by the Hon'ble Supreme Court of Pakistan in a case titled as **Rehmat Ullah Vs. State (2011 SCMR 1332)**, that;

"The Courts should not grant or cancel bail when the trial is in progress".

12. Learned counsel for the petitioner has not made any argument regarding misuse of concession of bail after arrest by respondent No.1 / accused. He is not nominated in the FIR; no recovery has been effected from his possession and if his bail after arrest is cancelled, no fruitful purpose will be served.

13. Considering the above facts and circumstances, I am clear in my mind that the petitioner has failed to make out a case for cancellation of bail granted to respondent No.1 / accused by the learned Additional Sessions Judge-III,

East-Islamabad vide order dated 14.10.2021, consequently, instant petition stands **dismissed** being meritless.

14. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh