

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

**Criminal Misc. No. 1229-BC of 2020**

Salman Ahmad

***Versus***

Syed Ali Raza Naqvi and another.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
07.	09.06.2022	Mr. Qaiser Imam Ch., Advocate for the petitioner. Barrister Afzal Hussain, Advocate for the respondent No. 1 / accused. Mr. Fahad Ali, State Counsel. Rizwan Akhtar, A.S.I.

Through the instant petition, the petitioner seeks cancellation of bail before arrest granted to respondent No. 1 / accused vide order dated 20.10.2020, passed by learned Additional Sessions Judge-V, East-Islamabad.

02. It is alleged that the respondent No. 1 / accused was serving with CM Pak Limited (Zong) as team lead SME (Small Medium Enterprises) Corporate Sales Department, Islamabad. The accused after receiving the

Sims from company, unlawfully sold in open market to different retailers and franchise dealers and has caused financial loss to the company, hence the instant F.I.R.

03. Learned counsel for the petitioner, *inter alia*, contends that the respondent No. 1 / accused is nominated in the FIR; sufficient evidence is available against him; recovery of Sims is liable to be effected, hence he was not entitled to grant of bail before arrest and has prayed that the instant petition be allowed and bail before arrest granted by the learned Additional Sessions Judge-V, East-Islamabad be cancelled.

04. Conversely, learned counsel for the respondent No. 1 / accused states that there is no evidence available against the accused; challan has been submitted and trial has been commenced; the petitioner / complainant is deliberately causing delay in the conclusion of trial and has prayed that instant petition is liable to be dismissed.

05. Learned state counsel has also

supported the arguments of learned counsel for the petitioner and has stated that bail before arrest granted to respondent No. 1 / accused is liable to be cancelled.

06. Arguments advanced by learned counsel for both the parties have been heard and record has been perused with their able assistance.

07. The F.I.R was registered on 19.08.2020 and bail before arrest of the respondent No. 1 / accused was confirmed on 20.10.2020, investigation in the case has been completed. Police has submitted challan report U/S 173 Cr.P.C in the Court of competent jurisdiction. Charge has been framed, learned trial Court has recorded the statement of complainant as PW-1 as well as statement of I.O. There are total five (05) witnesses in the case, out of which statements of two (02) witnesses have been recorded.

08. Order sheet of the learned Trial Court reveals that the petitioner / complainant is deliberately causing delay in the conclusion of

trial. The complainant party is not producing its witnesses, henceailable warrants have been issued by the learned Trial Court on 29.07.2021.

09. In order dated 26.10.2021, learned Senior Civil Judge-III/Magistrate Section-30, East-Islamabad has mentioned that the Naib Court has informed the PWs through his cell phone to appear and record their statements. In response thereof, the complainant told the Naib Court not to call him again and disturb him, otherwise, he will face the consequences. Non-ailable warrants of complainant were issued with the direction to SHO, P.S. Banni Gala to produce the complainant on same day positively at 11:30 a.m., but at 11:30 a.m. the PWs did not appear rather sought adjournment from the Court.

10. The witnesses also did not appear on 27.11.2021, which reflects that the complainant party willfully causing the delay, even in the F.I.R the quantum of amount regarding which the accused allegedly caused loss to the complainant is not mentioned.

There is no statement of the franchise dealers and the only statements of two (02) employees of the complainant are available.

11. As the respondent No. 1 / accused has been granted bail before arrest by the Court of learned Additional Sessions Judge-V, East-Islamabad; principles for grant of bail and its cancellation are different, it has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Sami Ullah and another Vs. Laiq Zada and another (2020 SCMR 1115)**, that:

***"Bare perusal of provision of section 497(5), Cr.P.C. it do not demonstrate any specific ground to press into the pretense of said provision of law, however, superior courts of the country from time to time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-***

***i) If the bail granting order in patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.***

***ii) That the accused has misused***

***the concession of bail in any manner.***

***iii) That accused has tried to hamper prosecution evidence by persuading / pressurizing prosecution witnesses.***

***iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.***

***v) That the accused has attempted to interfere with the smooth course of investigation***

***vi) That accused misused his liberty while indulging into similar offence.***

***vii) That some fresh facts and material has been collected during the course of investigation with tends to establish guilt of the accused.”***

12. 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. Reliance is placed upon a case titled as **Sharif Khan Vs. The State and another (2021 SCMR 87).**

13. As the trial in the case has commenced, charge has been framed and statements of two (02) PWs have been recorded. In this regard, 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."***

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

vide order dated 20.10.2020, consequently,  
the instant petition stands **dismissed being**  
**meritless.**

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

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Bilal /-*