

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.795-BC /2019

Saad Karim Laghari
VS
Sher Dil Khan, Etc

Serial No. of order/ proceeding.	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
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02	27.01.2020	Raja Rizwan Abbasi & Gulfam Ashraf Goraya, Advocate alongwith the petitioner. Qazi Jahanzeb Gul Qureshi Advocate alongwith accused/ respondent. Mr. Zohaib Hassan Gondal, State counsel with Muhammad Ishaq SI, P.S Industrial Area, Islamabad.
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GHULAM AZAM QAMBRANI, J

The petitioner [Saad Karim Laghari] seeks cancellation of bail granted in favour of respondent No. 1/ accused, in case FIR No. 273/2019, dated 15.6.2019, under sections 506 (2), 452 of PPC & 25-D Telegraph Act, Police Station Industrial Area, Islamabad.

2. Brief facts of the case are that the complainant/ petitioner lodged the FIR stating therein that on 13.6.2019 at about 9:30 PM, the accused/respondent entered into the house of the petitioner armed with a pistol and tried to kidnap eight years old minor daughter of the petitioner, on her hue and cry the accused left his daughter free and threatened the petitioner to kill him, thereafter the accused called on the cell phone of his wife and threatened her to kill her and her family. If they tried to complain the matter to the police, hence the instant FIR.

3. Learned counsel for the petitioner submits that the bail granting order is perverse, arbitrary and beyond the spirit of law; that the offence is of heinous nature and sufficient evidence is available on record to corroborate the allegations levelled against the accused/respondent ; that the learned Trial Court has failed to appreciate that the respondent has been nominated in the FIR and he has failed to establish any ulterior motive on the part of the complainant and the police; that the accused/ respondent has misused the concession of bail when he and his friends made numerous calls to the wife of the petitioner from unknown numbers on 25.6.2019 and threatened her of dire consequences, therefore, bail granted to him by the

learned Judicial Magistrate Section 30-West, Islamabad vide order dated 10.7.2019 may kindly be re-called.

4. On the other hand, learned counsel for the respondent/ accused contended that the accused did not misuse the concession of bail nor did threaten the complainant or his wife in any manner; that the FIR has been lodged against him on the basis of malafide intention and ulterior motives and that false and baseless allegations have been levelled against him in the FIR.

5. Arguments heard, record perused.

6. Perusal of the record depicts that the alleged incident stated to have been taken place on 13.06.2019 and FIR has been lodged on 15.06.2019 with an inordinate and un-explained delay of two days. The accused/ respondent moved pre-arrest bail before the learned Addl. Sessions Judge, Islamabad, which was refused vide order dated 29.06.2019, therefore, the accused moved bail after arrest which was granted to the accused/ respondent on 10.07.2019 by the learned Magistrate Section-30. Record further reveals that the call data was of dated 12.06.2019 to 06.10.2019 whereas the accused/ respondent has been granted bail on 10.07.2019. Further, there is no evidence on record with regard to threats extended by the accused/ respondent to the prosecution witnesses after grant of bail, Record further shows that no application has been filed with regard to allegations for extending of threats to the complainant and misuse of concession of bail, before the learned Trial Court.

7. The Hon'ble Apex Court while dealing with an identical preposition has laid down the principles for grant of bail in elaborative manner in the judgment rendered in the case titled "The State v. Rafiq Ahmad Channa" [2010 SCMR 580] and it is instructive to reproduce the relevant passage therefrom for learning of all concerned:

- a) Whether there is or is not a reasonable ground for believing that the accused has committed the offence with which he is charged ?
- (b) Whether the case requires further enquiry into the guilt of commission of non-bailable offence within the scope of Section 497 (2) Cr.PC ?
- (c) Whether the accused is minor, woman, sick or infirm person?
- (d) The nature and gravity of the charge.

- (e) The severity or degree of the punishment which might follow in the circumstances of the case on conviction.
- (f) The danger of the accused absconding if he is released on bail.
- (g) The danger of witnesses tampered with.
- (h) The danger of the alleged offence being continued or repeated.
- (i) The character, the means and standing of the accused.
- (j) An opportunity to the accused to prepare his defence.
- (k) The accused has already been in jail for a considerable period and the trial is not likely to conclude in near future at least.
- (l) Bail should never be withheld as a punishment."

8. The considerations for grant of bail are quite different from the considerations for cancellation of bail. Once bail has been granted by a competent Court of law, strong and exceptional grounds are required for cancelling the same. In such cases, it is to be seen as to whether order granting bail is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice. Considering the case of present respondent/accused for the grant of bail on the above touchstone, I am of the view that the learned Judicial Magistrate has rightly granted the bail to the respondent/accused. There is no evidence on record that the respondent has tampered with the prosecution evidence or misused the concession of bail. The bail can be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for grant of bail or there is any apprehension of repetition of the offence. In this regard reliance has been placed on the Judgment titled "The State Vs Abdul Hameed" [2015 YLR 568], "The State Vs Khalid Mehmood" [2006 SCMR 1265] & "Ahsan Akbar Vs The State" [2007 SCMR 482].

8. For the foregoing reasons, instant petition is devoid of merits, therefore, is hereby dismissed.

9. However, the observations made hereinabove are meant for disposal of this application, which shall have no bearing on merits of the case.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE