

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

Criminal Misc. No. 847-BC/2020  
Rizwan Ullah  
VERSUS  
Muhammad Ullah, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.07.2020	Raja Iftikhar Ahmad , Advocate for the petitioner. Syed Shahbaz Shah, learned State Counsel Raja Aamir Shahzad, Advocate for respondents No.1 to 3. M. Ashraf SI with record.
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Through the instant petition under Section 497(5) of the Code of Criminal Procedure, 1898 ("Cr.P.C"), petitioner/complainant assails order dated 08.07.2020, passed by the learned Additional Sessions Judge-V, Islamabad-East, whereby respondents No.1 to 3 (Muhammad Ullah, Mohibullah and Junaid Ullah) were allowed post-arrest bail in case FIR No.160, dated 21.06.2020, under Sections 324, 148, 149, 337-F(iii), (ii), 337-A(ii), PPC, Police Station Shahzad Town, Islamabad.

2. Facts, relevant for the disposal of instant petition are that the petitioner lodged the subject FIR with the allegations that Asfand Yar, while armed with dagger, along with co-accused Abdul Nabi Bangash, Junaid Ullah, Mohabbiullah, (respondents 2 & 3) armed with Kalashnikovs, Muhammad Ullah (respondent No.1) with 30 bore pistol and Rehmatullah with dagger along with 8/10 unknown persons duly armed with lethal weapons under the command of Abdul Nabi Bangash, trespassed into his

house on 21.6.2020 at about 6:00 p.m. within the area of street No.12, Royals Homes. According to the allegations, the role assigned to respondents 1 to 3 is that respondent No.1 caught hold Abdul Rahim, respondent No.2 gave blow of Kalashnikov to Samiullah on his face while respondent No.3 Junaid inflicted a Kalashnikov blow on the feet of Saad.

3. The cross-version of the present FIR was registered on the night of 22.06.2020 at about 2:20 a.m. on the statement of Asfand Yar, one of the accused in the subject FIR, wherein it is alleged that Haji Rahim Khan, Abdul Rahim, Rizwan (present petitioner), Saifullah, Insha Allah along with 5/6 unknown persons in prosecution of their common intention, trespassed into his house, gave severe beating and that Insha Allah inflicted a Kalashnikov Butt blow to Junaid at his right hand and the assailant also extended threats of dire consequences.

4. After the registration of FIR, both the sides moved post arrest bail applications. The respondents 1 to 3 were allowed bail vide impugned order while accused of cross-version Abdul Rahim, Saifullah and Samiullah were also granted the same concession vide order of even date by the learned Addl: Sessions Judge-V, Islamabad (West).

5. Learned counsel for the petitioner contends that the order impugned is not in consonance with the spirit of law on the subject; that mere presence of cross-version without ascertaining the guilt of an individual of an accused cannot be made basis to extend

concession of bail; that the FIR lodged prior in time specifically mentions the role of the respondents 1 to 3 who in prosecution of their common intention launched an attack while armed with deadly weapons, caused injuries and attempted to commit murder; that offence under Section 324 PPC falls within the ambit of prohibitory clause, therefore, impugned order is liable to be set aside.

6. On the other hand, learned counsel for respondents 1 to 3 supported the impugned order. It is argued that the very registration of the FIR is tainted with *malafide* on the part of the petitioner; that actually it was the complainant side who launched an attack that it is the prerogative of the trial court to determine as to who was the aggressive party; that offence under Section 324 PPC does not attract and that essentials to warrant cancelation are missing in this case. Learned counsel placed reliance upon case law reported 2019 YLR 2374, 2006 P.Cr.L.J. 843, 2016 SCMR 676, 2020 P.Cr.L.J. 338, 2011 MLD 1252, and 1999 SCMR 2621.

7. Heard the learned counsel for the parties and perused the record with their able assistance.

8. It is settled principle of law that for cancellation of bail in terms of Section 497(5) of the Cr.PC, strong and exceptional grounds warranting interference in the bail granting order are required. The Hon'ble Apex Court in case of "Muzaffar Iqbal V. Muhammad Imran Aziz and others (2004 SCMR 231)" held that:-

“3. It is well settled by now that “considerations for the cancellation of bail are different from the considerations for the grant of bail. Section 497(1) Cr.PC prohibits the grant of bail for offences punishable with death or imprisonment of ten years or over. Section 497(5) Cr.PC does not command the Court to cancel the bail even when the offence is punishable with death or imprisonment for life, and even if the grant of bail is prohibited under Section 497(1) Cr.PC the discretion is left in the Court under Section 497 (5) Cr.PC which is *pari materia* with the principle which apply to the setting aside of the orders of acquittal.” (Miandad V. The State 1992 SCMR). In view of what has been mentioned herein above, it is not a fit case for cancellation of bail as strong and exceptional grounds are needed to get it cancelled which are not available.” [emphasis added]

9. Similarly, in the case of Khalid Ahmad Soomro and others V. The State (PLD 2017 SC 730), the Hon’ble Apex Court held that:-

“4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497, Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police.

5. Although for grant of pre-arrest bail one of the pre conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years’ imprisonment. All those

aspects if are combindly taken, may constitute element of mala fide.”

10. The Hon’ble Apex Court of the land in “Samilullah and another V. Laiq Zada and another (2020 SCMR 1115) laid down certain principles governing cancellation of bail as under:-

- “i) If the bail granting order is 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 the court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) The accused misused his liberty while indulging into similar offence.
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused.”

When facts of the case-at-hand are considered in the light of above directed guidelines, the case of the petitioner is not covered in any of the said guidelines.

11. In the light of above, when both the sides came up with different stance and there is a cross-version from the petitioner side, therefore, the question of vicarious liability would be determined during the trial and when the case, otherwise, is one of further inquiry, bail granting order could not be interfered with.

12. The case laws relied upon by the learned counsel for the petitioner do not extend any help

to the petitioner due to having distinct facts and circumstances.

13. Even otherwise, for seeking cancellation of bail, there should be some material to show that the accused has misused the concession of bail, threatened the prosecution witnesses or hampered or attempted to hamper the evidence. No such ground has been even alleged, therefore, in absence of ingredients warranting cancellation of bail, the instant petition cannot succeed. It is thus accordingly **dismissed** being devoid of merits.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran