

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

Criminal Misc. No. 884-BC/2020  
Usman Shaukat  
Versus  
Kamran Ali, 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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03.09.2020	Malik Ghulam Mustafa Kandwal, learned ASC for the petitioner/complainant, Mr. Javed Saleem Shorish, learned ASC and Ms Kulsum Khaliq, Advocate for respondent No.1/accused, Ch. Muhammad Tahir, learned AAG for State with Humera Aslam SI, FIA, CCRC:
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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 29.06.2020, passed by the learned Judge, Prevention of Electronic Crimes Court Islamabad, whereby pre-arrest bail petition of the respondent No.1/accused Kamran Ali, was confirmed in case FIR No.32, dated 25.10.2019, under Sections 16, 20 & 24 of the Prevention of Electronic Crimes Act read with Sections 419, 420, 500 & 506 PPC, Police Station FIA/Cyber Crime Reporting Centre, Islamabad.

2. Facts, relevant for the disposal of instant petition are that the petitioner got registered the subject FIR against the respondent No.1 with the allegation that the latter generated fake Whatsapp profile associated with mobile phone No.0320-9359049, for black-mailing, harassing and life threatening sent messages/voice notes through said account and also forwarded defamatory videos against the petitioner and his

Company by impersonating as an employee of Bio Labs (Pvt.) Ltd and also made baseless propaganda through his personal Facebook profile.

After the registration of above stated FIR, the respondent No.1 was arrested and sent to judicial custody where-after he applied for post arrest bail which was allowed by the learned Judge, Prevention of Electronic Crime Court, Islamabad vide order dated 12.12.2019 in offences under Sections 16, 20 & 24 of the Prevention of Electronic Crimes Act read with Sections 420, 500 & 506 PPC.

The petitioner/complainant assailed the order ibid before this Court through Criminal Misc. No.12-BC/2020 which was dismissed being not pressed vide order dated 19.02.2020 as Section 419 PPC has been added and the respondent No.1 had to file fresh bail application for the newly added section while the petitioner opted not to press the bail cancellation petition in order to oppose the bail application, to be filed by the respondent No.1/accused.

3. The respondent No.1/accused then applied for pre-arrest bail in offence under Section 419 PPC, wherein on 05.05.2020, he was allowed ad-interim pre-arrest bail which was subsequently confirmed vide order dated 29.06.2020, being assailed through the instant bail cancellation petition.

4. Learned counsel for the petitioner contends that the impugned order is against the law and facts; that in presence of specific allegations and the fact that recovery of mobile

phone is yet to be effected, extra ordinary concession of pre-arrest bail could not have been extended to the said respondent; that there is a specific allegation of impersonation, therefore, impugned order is liable to be set aside.

5. On the other hand, learned counsel for the respondent No.1/accused contends that respondent No.1/accused was earlier allowed post-arrest bail, remained on physical remand and that section 419 PPC was added subsequently after inordinate delay; that the offence does not fall within the ambit of prohibitory clause; that the grounds warranting cancellation are missing; that petitioner is not required for further investigation, therefore, petition is liable to be dismissed. Learned counsel placed reliance upon case laws reported as 2020 SCMR 1115, 2020 P.Cr.L.J. 988, and 2020 P.Cr.L.J. .338.

6. Learned State Counsel however, prayed for acceptance of the instant petition, *inter alia*, on the ground that the order impugned being contrary to facts and law on the subject is liable to be set aside; that the investigation fully implicates the respondent No.1/accused with the commission of alleged offence of Section 419 PPC.

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

8. 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 narrated guidelines, the case of the petitioner is not covered under any of the said guidelines.**

**Even otherwise, it is borne out of record that earlier respondent No.1/accused was allowed post-arrest bail and not pre-arrest bail as argued, cancellation petition assailing said bail granting order was withdrawn by the petitioner; there is inordinate delay of about six months in adding Section 419 PPC without any explanation and that there is no allegation regarding misuse of concession of bail. In addition, it is noticed that after two days physical remand, the respondent No.1/accused was sent to judicial custody as he was no more required for further investigation.**

The above facts coupled with the fact that there is an inordinate delay in adding Section 419 PPC, the element of malice and malafide cannot be ruled out, which is a pre-requisite for the exercise of extra ordinary discretion of pre-arrest bail.

The allegation of scandalizing and propagating was also replied in terms that the respondent No.1 resigned from the Company of the petitioner and was issued a certificate, having good character.

9. The law is by now well settled that for cancellation of bail in terms of Section 497(5) of the Cr.P.C strong and exceptional grounds warranting interference in the bail granting order are required. Section 497 (5) Cr.P.C does not empower the court to cancel the bail even when the offence is punishable with capital punishment and the discretion termed as *pari meterea* with the principle to be applied for upsetting the order of acquittal. Reliance is placed upon case of "Muzaffar Iqbal V. Muhammad Imran Aziz and others (2004 SCMR 231) and Khalid Ahmad Soomro and others V. The State (PLD 2017 SC 730)."

10. 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, while in the instant case, no such ground has even been alleged.

11. The case laws relied upon by the learned counsel do not extend any help to the

petitioner due to having distinct facts and circumstances.

12. In view of above, the instant petition is devoid of merits and is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran