

Form No: HCJD/C-121.

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

Criminal Misc. No. 542-BC/2021

Yasir Mehmood  
**Vs**  
Ahmed Sabir, 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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<u>20-09-2021.</u>	Mr. Naveed Malik, Advocate for the petitioner. Raja Faisal Younas, Advocate for respondent No.1. Mr. Shazeb Nawaz Khan, State Counsel. Mr. Muhammad Riaz Noon, ASI, P.S Aabpara, Islamabad with record.
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Through this petition the petitioner seeks cancellation of bail granted to respondent No.1 by the learned Additional Sessions Judge-IX, West-Islamabad by order dated 31.03.2021 in relation to FIR No. 118/2020 registered under section 489-F of PPC at Police Station Aabpara, Islamabad.

2. The learned counsel for the petitioner took the Court through the factual aspect of the matter and submitted that respondent No.1 had issued a cheque in the amount of Rs.14,600,000, dishonestly, and FIR No. 118/2020 was registered on it being dishonoured. He further submitted that the said respondent moved multiple applications for grant of bail before arrest and subsequently absconded. That his conduct was tantamount to

abuse of the process of the court and did not entitle him to the concession of bail, which ought to be cancelled. He relied on **Abdul Razzaq Vs. Shah Nawaz (2003 YLR 1573)** and **Muhammad Rizwan Vs. The State and 3 others (2007 PCr.LJ 78)**.

3. Learned counsel for respondent No.1 submitted that there is no illegality in the order passed by the learned trial Court. He further submitted that grounds for grant of bail are different from the grounds for recalling the concession of bail once granted by the learned trial Court in exercise of its discretion and relied on **Muzaffar Iqbal Vs. Muhammad Imran Aziz and others (2004 SCMR 231)**, **Ghulam Sikandar and another Vs. Mamaraz Khan and Others (PLD 1985 SC 11)**, and **Sami Ullah and another Vs. Laiq Zada and another (2020 SCMR 1115)**. He contended that in view of the grounds for recalling the bail granting order summarized by the august Supreme Court in **Sami Ullah and another Vs. Laiq Zada and another (2020 SCMR 1115)**, the petitioner has failed to make out a case for cancellation of bail.

4. The learned State Counsel submitted that the challan against respondent No.1 was presented on 03.02.2021 and the trial has commenced. He contended that the offence under section 489-F of

PPC fell within the non prohibitory clause and the august Supreme Court had recently reiterated in ***Criminal Petition No. 529 of 2021 Iftikhar Ahmed Vs. State*** the law laid down in ***Muhammad Tanveer Vs. State (PLD 2017 SC 733)*** i.e. grant of bail in offences not falling within the prohibitory limb of section 497 Cr.P.C is the rule and refusal is the exception. He opined that the bail granting order suffered from no illegality.

5. In view of the law laid down by the august Supreme Court the concession of bail once afforded to an accused cannot be interfered with merely because the High Court disagrees with the decision reached by the trial Court in exercise of its discretionary jurisdiction. The august Supreme Court held in ***Ehsan Akbar Vs. The State and 2 others (2007 SCMR 482)*** that bail can be cancelled where the bail granting order is patently illegal, erroneous or factually incorrect resulting into miscarriage of justice. The learned counsel for the petitioner has been unable to point out any such illegality in the bail granting order.

6. There must be strong and exceptional grounds for cancellation of bail and the learned counsel for the petitioner has failed to establish that his case falls within the grounds enumerated by the august Supreme Court in ***Sami Ullah and another***

**v. Laig Zada and another (2020 SCMR 1115)**. It has been held in **Sami Ullah** that a court ought to be reluctant to interfere with a bail granting order even if it is of the view that such order is not sustainable in the eyes of law, so long as the material on record does not establish that the concession of bail has been misused. It was held in **Sami Ullah** that:

*"...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 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 absconson 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 which tends to establish guilt of the accused.*

7. The august Supreme Court most recently in **Criminal Petition No. 529 of 2021** titled **Iftikhar Ahmed Vs. State** has reiterated the

considerations to be taken into account for grant of bail in offences not covered by the prohibitory clause of section 497(1) Cr.P.C as follows:

*"The main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society, if there is an apprehension of repetition of offence or commission of any other untoward act by the accused. Therefore, in order to make the case of an accused person fall under the exception to the rule of grant of bail in offences not covered by the prohibitory clause of Section 497(1) CrPC, the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail. This Court in the cases of Tariq Bashir [Tariq Bashir Vs. State PLD 1995 SC 34], Zafar Iqbal [Zafar Iqbal Vs. Muhammad Anwar 2009 SCMR 1488] and Muhammad Tanveer [Muhammad Tanvir Vs. State PLD 2017 SC 733] has time and again illustrated such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of: (a) his abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous*

*criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. A court which deals with an application for grant of bail in an offence not falling within the prohibitory clause of Section 497(1) CrPC must apply its judicious mind to the facts and circumstances of the case and to the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offence only when it finds any of the above noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle.*

8. It was held by the august Supreme Court in **Shahid Imran Vs. The State and others (2011 SCMR 1614)** that once a trial has commenced, the court ought not withdraw the concession of bail granted to an accused. Admittedly the trial in the instant case has commenced and in view of the law laid down in **Shahid Imran**, it is not for this Court to interfere with the bail granting order passed by the learned Additional Sessions Judge. This Court cannot interfere with the right of the accused to liberty,

which is guaranteed by the Constitution, and withdraw the concession of bail afforded to him by the trial court in exercise of discretion vested in it. It is a settled principle of law that an accused is to be deemed innocent until proven guilty in accordance with law. Notwithstanding that the accused is being tried for a criminal offence, his right to liberty guaranteed under Article 9 of the Constitution cannot be interfered with lightly.

9. In the instant case, respondent No.1 is charged with an offence under section 489-F of PPC, which is not covered by the prohibitory clause of section 497(1) Cr.P.C. By admitting respondent No.1 to bail, the learned Additional Sessions Judge has acted in accordance with the law laid down by the august Supreme Court in **Iftikhar Ahmed** and **Muhammad Tanveer**. No allegation has been made that respondent No.1 has abused the concession of bail or is otherwise liable for conduct that constitutes a ground for cancellation of bail in terms of the law enumerated in **Sami Ullah**.

10. In view of the above, the instant petition is without merit and is dismissed accordingly.

(BABAR SATTAR)  
JUDGE