

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.184-BC /2019

Muhammad Asim
VS
The State, 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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08

27.01.2020

Raja Haroon Qadeer, Advocate for petitioner.
Raja Basharat Sultan Advocate along with respondents 3 to 5.
Malik Mazhar Javed, State counsel with Imran SI, P.S Bahara Kahu, Islamabad.

GHULAM AZAM QAMBRANI, J

The petitioner [Muhammad Asim] seeks cancellation of bail granted in favour of respondents No. 3 to 5/ accused, in case FIR No. 482/2018, dated 24.11.2018, under sections 436, 506-II ,148,149 PPC, registered at Police Station Bhara Kahu, Islamabad.

2. Brief facts of the case are that the complainant/ petitioner lodged the FIR with the allegations that on 21.11.2018 at about 11.00 AM accused/respondents came on his land, armed with deadly weapons i.e Kalashnikov, 12-bore gun, pistol and axe, caused injuries to him and his father on different parts of the body and also threatened for dire consequences. They also burnt the huts of his employees, hence the instant FIR.

3. Learned counsel for the petitioner submits that learned Trial Court has failed to appreciate that the respondents have been nominated in the FIR and they have failed to establish any ulterior motive on the part of the complainant and the police; that the accused/ respondents at the time of grant of pre-arrest bail by the learned Additional Sessions Judge, had committed assault upon the complainant and his witnesses; that the accused persons are destroying prosecution evidence by giving threats and pressurizing them to refrain from appearing in the Court against them, therefore, bail granted to them by the learned Additional Sessions Judge, Islamabad vide order dated 14.3.2019 may kindly be re-called.

4. On the other hand, learned counsel for the respondents/accused contended that the accused did not misuse the concession of bail nor did they threaten the

complainant's witnesses in any manner; that the FIR has been lodged against them on the basis of malafide intention and ulterior motives and that false and baseless allegations have been levelled against them in the FIR; that civil suit is pending between the parties and the complainant is trying to convert the civil litigation into criminal litigation.

5. Arguments heard, record perused.

6. Perusal of the record depicts that the alleged incident stated to have been taken place on 21.11.2018 and FIR has been lodged on 24.11.2018 with an inordinate and un-explained delay of three days. On query, with regard to threats extended by the respondents to the prosecution witnesses, the petitioner failed to bring on record any report with regard to extending of threats. Record further shows that no application has been filed with regard to allegations for extending of threats to the witnesses. On the other hand, learned counsel for respondents placed on record certified copy of the order dated 29.4.2019 passed by Hon'ble Supreme Court of Pakistan, whereby the main co-accused Muhammad Faisal Abbasi was admitted to pre-arrest bail. Record further reveals that Section 506 & 148 PPC have been deleted. The Hon'ble Apex Court while dealing with an identical preposition has laid down the principle 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."

7. The considerations for the grant of bail are quite different from the considerations for the 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 mis-carriage of justice. Considering the case of present respondents/accused for the grant of bail on the above touchstone, I am of the view that the learned Additional Sessions Judge rightly exercised the grant of bail to the respondents/accused. The main accused Faisal Abbasi, who has been given an active role, has already been admitted on pre-arrest bail by the Hon'ble Supreme Court in Crl. Petition No. 414 of 2019 titled as " Muhammad Faisal Abbasi Vs The State thr. A.G.Islamabad & another". There is no evidence that the respondents have tampered with the prosecution evidence or mis-used 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 the grant of bail. In this regard reliance has been placed on the Judgment titled " 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, petition 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

S.Akhtar