

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Miscellaneous No.210/BC of 2019

Muhammad Banaras

VS

Aqeel Yousaf Uppal and 02 others.

Petitioner's by : Mr. Afzaal Qadeer Satti,
Advocate.

Respondent's by : Hafiz Ejaz Mehboob, Advocate.
Mr. Sadaqat Ali Jahangir, learned
State Counsel.
Ch. Zafar, ASI.

Date of decision : 06.02.2020

AAMER FAROOQ, J. - The petitioner, in the instant petition, seeks cancellation of bail granted by this Court in case F.I.R. No.290/17, dated 29.11.2017, for offences under Sections 420, 468, 471 P.P.C. Police Station Lohi Bher, Islamabad, vide order dated 12.09.2018 in Criminal Misc. No.571/B of 2018.

2. The facts, in brief, are that on the complaint of the petitioner, an F.I.R. against respondent No.1 was registered, wherein it was alleged that the petitioner and respondent No.1 had business relations and on the basis thereof investment was made by the petitioner with

respondent No.1 for purchase of the property and sum of Rs.50,00,000/- was invested which has not been returned.

3. Learned counsel for the petitioner, *inter-alia*, contended that bail was granted on the basis of compromise as respondent No.1 agreed to make payment of balance amount of Rs.45,00,000/- within six months. It was contended that the terms of the agreement have not been adhered to.

4. Learned counsel for respondent No.1 when was inquired as to the presence of respondent No.1 it was submitted that he is indisposed. Even no justification was provided regarding non-payment of Rs.45,00,000/- as undertaken by respondent No.1/petitioner in Criminal Misc. No.571/B of 2018.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The grievance of the petitioner is that the terms of the compromise on the basis of which bail was granted are not complied with. This Court while deciding Criminal Misc. No.571-B of 2018, vide order dated 12.09.2018 allowed the bail to respondent No.1 on the condition that he shall pay back the amount to the complainant/petitioner within six months. It was specifically noted in the order that in case respondent No.1 does not make the payment within

six months or join the investigation, the respondents can move application for cancellation of bail.

7. Respondent No.1 during the course of proceedings in above mentioned bail application categorically admitted receipt of Rs.5 million and undertook to pay back Rs.4.5 million. The bail granting order was not challenged or any application was made for the correction/modification of the same, hence has attained finality. Admittedly, the amount in question has not been paid back as was conceded by learned counsel for respondent No.1. Moreover, despite orders by this Court, respondent No.1 has not appeared in person on the pretext that he is indisposed. There is no application seeking his exemption from appearance nor any medical certificate or any other document has been placed on record to support the contention. This Court was informed that respondent No.1 is also not appearing before the learned Trial Court.

8. In view of the referred position, this Court is left with no choice but to recall order dated 12.09.2018, whereby respondent No.1 was granted bail in the aforementioned F.I.R.

9. For the above reasons, instant petition is **allowed** and order dated 12.09.2018 passed in Criminal Misc. No.571/B of 2018 is recalled.

(AMER FAROOQ)
JUDGE