

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

Crl.Misc.No.205-BC/2019

Mukhtar Khan

**Versus**

Maqbool Khan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>04.07.2019</b>	<b>Mr. Niazullah Khan Niazi, Advocate for the petitioner</b> <b>Mr. Abdul Haq Wazir, Advocate for respondents No.1 and 2</b> <b>Gulfraz and Idrees Sis</b>

Through the instant criminal miscellaneous petition, the complainant/petitioner, Mukhtar Khan S/o Asghar Khan, seeks cancellation of post-arrest bail granted to respondents No.1 and 2, vide order dated 25.03.2019, passed by the Court of the learned Sessions Judge, Islamabad, in case F.I.R. No.13, dated 14.01.2019, under Sections 395, 412, 448, 511, 148, 149, 427, 337-H(ii) and 506(ii) P.P.C. registered at police station Noon, Islamabad.

2. Brief facts as stated in the F.I.R. are that the petitioner is the owner in possession of a petrol pump (Capital Filling Station) at *Jhangi Syedan*. After obtaining an NOC from the concerned departments, the petitioner had been running the business of said Filling Station. It was also reported in the F.I.R. that on 13.01.2019, at about 9:30 p.m., the accused along with 10/15 unknown persons armed with firearms weapons and *dandas* forcibly entered in the said Filling Station and extended threats to kill the persons/staff present there. It was further reported that the said accused persons, after snatching the rifle from security guard, committed *dacoity* and looted Rs.14,50,000/- in cash and Computers/C.P.U. (two in number) besides mishandling with the staff.

3. Learned counsel for the petitioner/complainant contends that earlier respondents No.1 and 2 preferred a petition for pre-arrest bail before the learned Sessions Judge, Islamabad, which was dismissed vide order 28.02.2019, wherein it was *inter-alia* observed that *"it is an admitted position that initially both petitioners and another were arrested from place of occurrence, on arrival of police and proceedings under sections 107/151 Cr.P.C. were also initiated against them and there is also evidence through CCTV cameras showing the entire episode"*; that subsequently, respondents No.1 and 2 filed an application for grant of post-arrest bail before the learned Sessions Judge, Islamabad, which was allowed, vide order 25.03.2019; that while granting post-arrest bail to respondents No.1 and 2, learned Sessions Judge failed to consider that they were duly nominated in the F.I.R. with specific role of committing *dacoity*; that respondents No.1 and 2 with the aid of 10/15 unknown persons committed *dacoity* from the petitioner's petrol pump while carrying deadly weapons; that major portion of amount stolen and firearms used during the commission of *dacoity* were recovered from the possession of respondents No.1 and 2; that CCTV footage available on the record shows respondents No.1 and 2's involvement in the commission of the alleged *dacoity*; that respondent No.1 had misused the concession of bail and threatened the petitioner of dire consequences; and that respondent No.1 and 2 are trying to tamper with the prosecution evidence. Learned counsel has prayed for the petition to be allowed and for the bail granting order to be recalled.

4. Learned counsel for respondents No.1 and 2 vehemently opposed the petition by stating that the

learned Sessions Judge, Islamabad, while granting post-arrest bail to respondents No.1 and 2, had rightly exercised the extra ordinary jurisdiction after ascertaining the material available on record; and that for the purpose of recalling a bail granting order, strong and exceptional grounds are required, which are missing in the instant case. Learned counsel for respondents No.1 and 2 has prayed for the petition in hand to be dismissed.

5. I have heard the contentions of the learned counsel for the parties and perused the record with their able assistance.

6. The first question for consideration by this Court in the light of contentions advanced by the learned counsel for the contesting parties is whether discretion in favour of respondents No.1 and 2 was correctly exercised by the learned Sessions Judge, Islamabad, while granting post-arrest bail to them and secondly, whether a case for cancellation of bail was made out in the given facts and circumstances of the case. Undoubtedly, under Section 497(5) Cr.P.C. the Court has ample powers to recall bail granted to an accused, but this authority has to be exercised in accordance with the principles laid down by the Superior Courts on the subject. In the case of Tariq Bashir and others Vs. The State (PLD 1995 Supreme Court 34), it was held that Section 497 Cr.P.C. divided non-bailable offences into two categories, i.e. (i) offences punishable with death, imprisonment for life or imprisonment for ten years, and (ii) offences punishable with imprisonment for less than ten years. In bailable offences, the grant of bail is a right and not a favour, whereas in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years), the grant of

bail is a rule and refusal is an exception, and that bail will be declined only in extraordinary and exceptional cases. Undoubtedly, Section 395 PPC is bailable and the same falls within the ambit of prohibitory clause of Section 497(1) Cr.P.C. It is well settled that in bailable offences, the grant of bail is a right and not favour, however, the concession of granting bail must be favourably considered and should only be denied in exceptional cases.

7. As regards the petitioner's contention that the CCTV footage shows respondents No.1 and 2's involvement in the commission of alleged crime, suffice it to say that deeper appreciation of the evidence at bail stage is not warranted and it is for the learned Trial Court to decide or pass any verdict after conclusion of the trial. The allegation that respondents No.1 and 2 had misused the concession of bail and threatened the petitioner and his employees, is a mere accusation against them and yet to be proved at trial. The reasons recorded by the learned Trial Court for the grant of post-arrest bail seem to be reasonable and are tentative in nature, which establish a case of further inquiry.

8. It is a settled principle of law that once discretion has been exercised by the Court of competent jurisdiction for the grant of bail, then the same cannot be reversed or recalled unless the same is either perverse or illegal. Judicial view is consistent on the point of cancellation of bail that once bail is granted by a competent court, there must be strong and exceptional reasons for recalling the same.

9. As mentioned above, for the purpose of cancellation of bail, strong and cogent reasons are required to be furnished, which are lacking in the instant case. In cases where post-arrest bail is

granted then the grounds which are essential for cancellation of bail are *inter-alia* as follows:-

- (i) Exceptionally strong grounds such as abuse / misuse of concession of bail;
- (ii) Bail can be recalled where the person on bail repeats the offence;
- (iii) Hampers the investigation;
- (iv) Makes some efforts to tamper with the evidence;
- (v) Prosecutes the witnesses;
- (vi) Manages to flee away from the country or beyond the control of sureties; and
- (vii) order of bail has been obtained through misrepresentation or suppression of facts.

10. Learned counsel for the petitioner has failed to point out any instance showing respondents No.1 and 2 have misused the concession of bail or their remaining at large would be a serious threat to the evidence brought on record against them. Therefore, I do not find any material which may warrant justification for the interference in the discretion exercised by the lower Court. Investigation is said to have been complete and the *challan* has been submitted in the Court.

11. In view of the above, I do not find any merit in this petition, which is accordingly dismissed. However, since the CCTV recording/footage of the alleged offence being committed and since the allegations levelled in the F.I.R. are of a serious nature, this case shall be entrusted to the learned Sessions Judge (West) who may consider entrusting the same to the Criminal Model Courts for expeditious disposal. Office is directed to transmit the copy of this Order to the learned District & Sessions Judge (West), Islamabad, for compliance.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Qamar Khan\*