Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.461-M /2019

Talat Hussain
Vs
Aqib Mehmood and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.07.2019	Raja Muhammad Shafat Khan, Advocate for the petitioner. Malik Awais Haider, State Counsel. Shah Nazar S.I.

AAMER FAROOQ, J. Through the instant petition the petitioner seeks a direction to the District Superintendent Jail Adyala, Rawalpindi to release the petitioner.

2. Brief background of the case is that the petitioner applied for bail in case FIR No.50 dated 29.01.2018 under Sections 324, 34, 337A(iii), 337F(ii), 337L(ii), 336 & 75 PPC registered with Police Station, Koral, Islamabad. The referred petition was allowed by this Court vide order dated 17.06.2019. In the petition as well as order certain offences which were not originally in the FIR but subsequently added, were not mentioned, therefore, the jail authorities did not release the petitioner. Hence, this petition.

3. The learned counsel for the petitioner contended that Sections 337C and 337L(i) PPC were added subsequently hence were not mentioned in the petition and bail granting order dated 17.06.2019. It was further contended that once bail is granted in an FIR the mentioning of all the offences/provisions is not essential. In support of his contentions learned counsel placed

reliance on the case titled ***Mst. Shahida Parveen v. The State and another*** **(1995 MLD 1082),** ***Abdul Shakoor v. The State*** **(2004 Cr.LJ 399) and** ***Muhammad Alam v. the State*** **(2018 PCr.LJ 837).**

4. The learned State Counsel *inter alia* contended that the offences 337C and 337L(i) PPC were added subsequently and since the same were not mentioned in the order passed by this Court, hence the petitioner needs to obtain the bail with respect to the said offences as well.

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

6. The petitioner Talat Hussain was admittedly granted bail by this Court in FIR No.50 of 2018 dated 29.01.2018 vide order dated 17.06.2019, however, few offences i.e. 337L(i) and 337C were added subsequently and not part of the original FIR. In support of his contention that the bail once granted in an FIR is a valid bail regardless of the fact that all the offences are not mentioned, learned counsel placed reliance on the case titled ***Mst. Shahida Parveen v. The State and another*** **(1995 MLD 1082).** In the referred judgment the Hon'ble Lahore High Court observed as follows:

> *"5. Once a person has been granted bail by a Court and ordered to be released forthwith, his further detention by the jail authorities would actually be illegal detention for which citizens would be perfectly justified to sue for damages. The specification of the penal provision in the F.I.R. or any related investigation paper does not control the contents of the narration of the F.I.R. 8 and the substance thereof. It is, therefore, directed that in future all jail authorities be careful in this matter because once a Court admits a person to bail then that person ceases to be in the custody of the jail authorities and is in*

the custodia legis of the Court. This application is accordingly accepted and disposed of."

7. Different view was taken in the subsequent decision of the Hon'ble Lahore High Court in case titled ***Abdul Shakoor v. The State*** **(2004 Cr.LJ 399)** wherein it was observed that where inadvertently one of the offence has not been mentioned in the bail granting order, subsequent order is required for the purpose of bail. The Court in the said order allowed the bail in respect of the additional offences as well as it had heard the case on merit. Similar view was taken by the Hon'ble Baluchistan High Court in case titled ***Muhammad Alam v. the State*** **(2018 PCr.LJ 837)**. The matter was considered in detail by the High Court of Utttarakhand (India) in case titled ***Babu Khan and 5 others v. State of Uttarakhand and another*** **(2012(1)N.C.C.409).** In the referred judgment it has been held as follows:

"8. A careful reading of the ratio laid down by this Court in Jamil v. State of Uttaranchal (supra) reveals that this Court too did not lay down that the accused persons should be enlarged on the same bail bonds and sureties for any graver offence whatsoever it may be, but the Court was cautious enough to use the words "which though seems to be graver....". The right interpretation of this phrase ought to be that if an added offence seems to be graver , then the lower Court should not ask the accused person for fresh bail application and, if the offence is certainly graver and triable by the Court of Sessions, then this observation of the Court made in Jamil v. State of

Uttaranchal should not be taken by the courts below as a mandate to grant bail to the accused persons on the same bail bonds and sureties which they furnished earlier.

9. If the logic that a person once released on bail need not surrender any further to seek fresh bail for the added offence is accepted for every eventuality, then it will create total anarchy in the society. If this logic is allowed to prevail, it might be possible that the influential persons, at the strength of their might and influence, will manage not to get the case registered at the police station against them as per the real nature of the incident and will seek the bail promptly in all the bailable sections from the Court of Magistrate and, immediately after obtaining the bail in all the bailale sections from the Court of Magistrate, they will let loose the Investigation Officer or the Magistrate to covert the case as per the real nature of the incident. By doing so, they will manage not to see the face of the lockup even for a moment in disregarded of the heinousness of the crime."

8. A careful reading of the abovementioned judgments shows that only in Mst. Shahida Perveen's case *supra*, it was held by the Hob'ble Lahore High Court that once bail is granted in an FIR it constitutes a valid bail for all the offences even if they are not mentioned in the FIR or bail granting order. However, the other judgments of the Hon'ble Lahore High Court, the Hon'ble Baluchistan High Court and even the

judgments from Indian jurisdiction are to the effect that a specific bail needs to be obtained with respect to the offences not mentioned in the bail granting order. I intend to agree with the latter view and do not approve the ratio in **1995 MLD 1082**. The High Court of Uttarakhand has dealt with the matter in detail and has lucidly highlighted the practical misuse of the bail granting order in case all the provisions with respect to which the petitioner has been imputed are not mentioned, hence a bail granting order needs to mention all the provisions under which the petitioner/accused is being investigated or is charged with.

9. In the instant case the matter was heard in detail on merit and bail was granted to the petitioner. It is just and proper that the bail is considered to be granted in the offences as well which were inadvertently not mentioned in the bail granting order. Hence, bail is also allowed to the petitioner in FIR No.50 *ibid* to the extent of Sections 337C and 337 L (i) PPC.

10. In view of the above, the instant petition is allowed and the petitioner is admitted to bail with respect to the referred offences as well. There shall be no order as to sureties as sureties ordered to be furnished in Crl. Misc. No.354-B/2019 vide order dated 17.06.2019 would be considered sufficient for the present application as well.

(AAMER FAROOQ)
JUDGE

Approved for reporting

JUDGE

M.NAVEED