JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Misc. No.326-BC of 2019

Malik Tariq Ayub & another
vs
Raja Arshad Mehmood & another

PETITIIONERS BY:	Mr. Faisal Siddiqi, Advocate.
RESPONDENTS BY:	Mr. Azam Nazir Tarar and Mr. Abdul Wahid Qureshi, Advocates for respondent No.1. Mr. Zohaib Hassan Gondal, State Counsel alongwith Ghulam Murtaza, Sub-Inspector, Police Station Shalimar, Islamabad.
DATE OF DECISION:	19.04.2022.

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BABAR SATTAR, J.- Through this judgment, this Court will decide Criminal Miscellaneous No.326-BC of 2019 and Writ Petition No.1721 of 2019, pursuant to which cancellation of bail has been sought, which was granted to respondent No.1 ***("Respondent")*** by the learned Anti-Terrorism Court ***("ATC")*** by order dated 30.04.2019.

2. The learned counsel for the petitioners submitted that the impugned order is perverse as it has been granted on the basis of statutory ground of delay available to an accused in a third proviso under Section 497(1) of the Code of Criminal Procedure, 1898 ***("Cr.PC")*** read together Section 21-D(4)(c) of the Anti-Terrorism Act, 1997 ***("ATA")***. He submitted that the third proviso itself provided that an accused who was charged with the offence of terrorism could not be released on bail on the basis of a statutory ground of delay and consequently, the

impugned order was issued in breach of Section 497(1) of Cr.PC. He then contended that the impugned order had also been issued in breach of Section 21-D of the ATA as Section 21-D(1) of the ATA excluded the application of Section 497 of Cr.PC in relation to grant of bail to an accused who was charged with an offence under the ATA. That the ATA is a special law, which has itself provided the scheme for consideration of grant of bail under Section 21-D of the ATA, which would even otherwise exclude the application of general law in relation to grant of bail (i.e. Section 497 of Cr.PC). He contended that for purposes of grant of bail, it was imperative for the learned ATC to have first concluded that there was no reasonable ground to believe that the accused was liable for the offence that he had been charged with and without such finding regarding the role of the accused in the case, no bail order could be issued. His third contention was that Section 21-D(3) of the ATA specified the circumstances in which the bail was not to be granted, including, inter alia, when there was a likelihood that the accused would abscond. He submitted that the accused in question had sought a transitory bail from the Multan Bench of the learned Lahore High Court, which was granted up until the date of 30.08.2016 by order dated 18.08.2016. But instead of surrendering before the learned ATC in Islamabad, the Respondent tried to leave the territorial jurisdiction of Pakistan from Pakistan-Afghanistan Border at Torkham on 27.08.2016, when he was arrested by the Federal Investigation Agency's staff and produced before Assistant Political Agent, Landikotal, Khyber Agency, on 28.08.2016, after which the Investigating Officer obtained his

physical custody from the Assistant Political Agent, Landikotal, Khyber Agency, on 01.09.2016 and presented him before the learned ATC on 02.09.2016. In view this background, it was evident that the Respondent was a flight risk, which had not been considered by the learned ATC rendering the impugned order perverse. In relation to Writ Petition No.1721 of 2019, the learned counsel for the petitioners submitted that the petitioner was the mother of the deceased, Barrister Fahad Malik. That the impugned order was passed one day before the national holiday of 1st May and was timed to ensure that the Respondent be released before a challenge could be brought against the bail order. That the petitioner filed an application in the office of the Chief Justice of Islamabad High Court on 30.04.2019 explaining the circumstances in which the impugned order had been passed and requesting the Islamabad High Court to exercise Suo Moto revisional powers under Cr.PC. That the Honorable Chief Justice in his wisdom converted the application into a writ petition, which was fixed for hearing before a Divisional Bench, which by order dated 30.04.2019 restrained Superintendent Central Prison Adyala from releasing the accused after noting that the Respondent had remained a fugitive from law and had previously attempted to leave the country to avoid trial in the instant case. He submitted that the petitioner was an aggrieved person being mother of the deceased Barrister Fahad Malik and that the High Court had expensive jurisdiction under Article 199 of the Constitution to take cognizance of the order passed by the learned ATC to meet the ends of justice, even though the petitioner had sought exercise of revisional jurisdiction under

Sections 435 and 439 of Cr.PC. He submitted that this Court had the power to convert proceedings initiated in exercise of revisional jurisdiction into proceedings under Article 199 of the Constitution and vice versa. He submitted that one of the objections taken up the Respondent was that no order could be passed in view of Section 497(5) of Cr.PC till such time that an accused had been released from prison. But that such objection was not sustainable in view of the law as enumerated by the superior courts in India as well as followed within our jurisdiction as in case of any illegal order, there was nothing requiring the court to first allow the release of an accused and then order that his bail be cancelled and he be arrested again.

3. The learned counsel for the Respondent submitted that a writ of certiorari could only be filed by an aggrieved person and the petitioner, even though she was the mother of the deceased Barrister Fahad Malik, was not an aggrieved person as she was neither the complainant in the case nor a witness to the incident in relation to which the FIR had been registered. He submitted that the law in relation to locus standi had been interpreted liberally only in relation to public interest litigation, which precedents were not applicable to criminal matters. His second contention was that while this Court had jurisdiction over an order passed by the learned ATC under Sections 435 and 439 of Cr.PC to revise the bail granting order, once a criminal miscellaneous application had been filed by the complainant the writ had become infructuous. His third contention was that where remedy of revision or any other statutory remedy was available a person could not rely on Article 199 of the

Constitution. He further contended that where concurrent remedies were available under various provisions of law, the petitioner was required to invoke the jurisdiction of the court under one specific provision and could not rely on multiple provisions simultaneously. That Section 497(5) of Cr.PC was not applicable in the instant case as it required that the accused, whose bail cancellation was sought, is released from prison, but in the instant case as the Respondent had not been released, resort could not be had under Section 497(5) of Cr.PC. He submitted that in view of Section 21-D(4) of the ATA delay in conclusion of the trial was a ground for release of an accused on bail in relation to an offence under the ATA. He submitted that in the instant case 70% of the delay was attributable to the prosecution and the learned ATC correctly took into account such delay as the basis for grant of bail to the respondent. He submitted that the scheme of the ATA contemplated day-to-day trial leading to conclusion of such trial within a period of seven days, which was why the conditions for grant of bail under Section 21-D of the ATA were restrictive. However, in a case such as the instant one, where the Respondent had remained hauled up in prison pending trial for five years and the delay was attributable to the prosecution, the learned ATC had correctly issued the impugned order, which suffered from no infirmity as at stake was the liberty of the accused guaranteed by Article 9 of the Constitution.

4. The learned counsel for the petitioners, in rebuttal, submitted that the question of maintainability of the writ petition was an academic question as the criminal miscellaneous

application challenging the impugned order had also been filed by the complainant. But that even after filing of such criminal miscellaneous application the petition had not become infructuous as it had been filed by different person (i.e. the mother of the deceased, Barrister Fahad Malik) while the criminal miscellaneous had been filed by the complainant. He submitted that it was now settled that the High Court could exercise its revisional jurisdiction under Sections 435 and 439 of Cr.PC to take cognizance of a bail order passed by the learned ATC.

5. The ATA is a special law. It is a settled principle that provisions of special law trump provisions of general law and the provisions of a general law cannot be relied upon when the subject-matter is specifically addressed by a special law. Section 21-D of the ATA provides an independent scheme for consideration of bail of an accused under the ATA and in view of settled principle of interpretation of special law versus general law, provisions of Section 497 of Cr.PC cannot be relied upon in the presence of Section 21-D of the ATA. Notwithstanding the settled principle of interpretation, even otherwise Section 21-D(1) of the ATA starts with non-obstante language, which excludes provisions of Sections 496, 497 and 498 of Cr.PC while vesting in the ATC, the High Court and the Supreme Court, the power and jurisdiction to grant or refuse bail to an accused in a case triable by the ATC. Section 21-D(2) of the ATA is in pari materia to Section 497(1) of Cr.PC, whereby in order to release a person accused of a non-bailable offence under the ATA, the court must first form an opinion that there appear no reasonable

grounds to believe that the accused is guilty of an offence punishable with death or imprisonment for life or imprisonment for not less than ten years. Formation of such opinion is a pre-requisite for grant of bail without which no accused, triable by the learned ATC, can be afforded the benefit of bail. Section 21-D(3) of the ATA then lists additional factors that constitute a negative list in the presence of which bail is to be denied, even in the event that the learned ATC comes to the tentative conclusion that no reasonable grounds exist for believing that the person is guilty of the offence charged with under the ATA. The ATC is to deny bail under Section 21-D(3) if it concludes that the person, if released on bail, would (a) fail to surrender to custody, (b) commit an offence while he on bail, (c) interfere with witnesses or obstruct the course of justice, or (d) fail to comply with conditions of release, if any. If the learned ATC comes to the conclusion that there are no reasonable grounds to believe that the person is guilty of the offence charged with, and further none of the negative considerations listed in Section 21-D(3) of the ATA are attracted, Section 21-D(4) of the ATA then provides the list of considerations to be taken into account in guiding the discretion of the learned ATC to release a person on bail.

6. Unlike the scheme under Section 497(1) of Cr.PC, the scheme of Section 21-D of the ATA is much more restrictive, which has been incorporated as the raison d'etre for promulgation of the ATA was speedy trial of heinous offences listed within the Schedule of the ATA, as also evident from Section 19(7) of the ATA which provides that the learned ATC

upon taking cognizance of the case is to proceed with trial on day-to-day basis and decide the case within a period of seven days, failing which the matter is to be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions. As it was conceived that cases being tried by ATCs would be concluded within a period of seven days, very stringent conditions were set out to order the release of a person on bail under Section 21-D of the ATA pending trial. In relation to such offenses the legislature in his wisdom struck a balance between the liberty of the accused and public interest in expeditious disposal of the cases involving terrorism and elected to fetter the right to liberty of the individual accused for the limited period of trial in public interest. But merely because a trial involving the offense of terrorism or a scheduled offense under the ATA is not concluded within 7 days, doesn't entitle the ATC to read within Section 21-D of ATA any additional exceptions to the conditions prescribed for grant of bail.

7. In view of the above scheme, it is evident that the learned ATC in considering grant of bail to an accused being tried by it cannot rely on Section 497 of Cr.PC for purposes of grant of bail. Section 21-D of the ATA prescribes a complete scheme which is attracted for purposes of grant of bail to an accused being tried for the offense of terrorism or another scheduled offence listed in the third Schedule to the ATA. Section 21-D(4)(c) of the ATA identifies "the time which has the person has already spent a custody for the time that he is likely to spend in custody, if he has not admitted to bail," as one of the considerations for grant of bail. However, such consideration

guiding the discretion of the learned ATC comes into play only after the ATC has formed an opinion that restrictions provided in Sections 21-D(2) and 21-D(3) are not applicable to the case of the accused.

8. The statutory ground for bail on the basis of delay in conclusion of the trial is provided in the third proviso of Section 497(1) of Cr.PC, which states the following:

> *"Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail-*
>
> *(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or*
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> *(b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded:*
>
> *Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of*

> *terrorism punishable with death or imprisonment for life."*

9. The last sentence of the said proviso provides unequivocal that statutory delay as a ground for bail is not available to a person who "is accused of an act of terrorism punishable with death or imprisonment for life". Thus, even where the ATC were confused as to whether or not provisions of Section 497(1) of Cr.PC could be relied upon for purposes of grant of bail, the 3rd proviso of Section 497(1) of Cr.PC itself clarifies that the ground of statutory delay in conclusion of trial is not available to an accused charged with an act of terrorism punishable with death or imprisonment for life.

10. Section 497(5) of Cr.PC provides the following:-

> ***Section 497(5)-*** *A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.*

Under Section 497(5) of CrPC, the power vested in the High Court or the Court of Sessions to cancel bail granted to a person is limited to a person who has been granted bail pursuant to provisions of Section 497 of Cr.PC. Given that the bail in relation to a person accused of an offence triable by the ATC is to be granted under provisions of Section 21-D of the ATA and not under Section 497(1) of Cr.PC, for purposes of cancellation of such bail granted under Section 21-D of the ATA, Section 497(5) of Cr.PC is not attracted.

11. The question of whether bail to an accused triable by the ATC was to be granted under Section 21-D of the ATA or Section 497(1) of Cr.PC came before the learned Sindh High Court in ***Muhammad Hashim vs. The State (2001 MLD Karachi 921)***, wherein it was held that the right to consideration of bail on the basis of statutory ground of delay was not bailable to an accused triable by the ATC. The learned Balochistan High Court in ***Abdul Salam vs. The State (2015 Pcr.LJ Balochistan 808)*** rendered the same opinion holding that a person triable by the ATC was not entitled to the benefit of statutory ground for bail provided under Section 497(1) of Cr.PC. The question of exercise of jurisdiction by the High Court in relation to bail granting order passed by the ATC came before the august Supreme Court in ***Faiz Muhammad vs. The State (2006 SCMR 93)***, wherein the bail cancellation order by the High Court was upheld by the apex Court on the basis that discretion exercised by the High Court was not arbitrary.

12. It has been held in various precedents that High Court can exercise its revisional jurisdiction under Sections 435 and 439 of Cr.PC despite the presence of alternative remedy under Section 497(5) of Cr.PC (see for example ***Nazir Ahmad vs. Latif Hussain (PLD 1974 Lahore 476)***, ***Asghar Ali vs. Abdul Shakoor (PLD 1999 Lahore 516)*** and ***Muhammad Zubair vs. The State (1996 MLD Lahore 1451***). There have been some conflicting judgments on the question of whether the High Court could exercise its revisional jurisdiction under Sections 435 and 439 of Cr.PC in relation to orders passed by the ATC under the ATA. A Full Bench of the learned Lahore High Court

considered the issue in ***Muhammad Jawad Hamid vs. Mian Muhammad Nawaz Sharif and others*** ***(PLD 2018 Lahore 836)*** and while relying on unreported judgment of the august Supreme Court in the case of ***Syed Hussain Abbass vs. The State*** ***(Criminal Appeals No.257 of 2000 and others)*** *(*wherein it had been held that the High Court being an appellate forum against orders of the ATC under provisions of the ATA could exercise revisional powers under Sections 435 and 439 of Cr.PC in relation to orders of the ATC which are not appealable), held the following:

> *"… ATC is subordinate/inferior court to the High Court; in ATA no restriction has been imposed for filing of revision petition, hence, the High Court has the visitorial power over ATC, therefore, can entertain petitions in the nature of those covered by Sections 435, 439 of the Code, except to grant bail or release an accused in a case triable by ATC."*

13. We agree with the opinion rendered by the learned Lahore High Court in ***Muhammad Jawad Hamid*** that this Court has the authority to exercise revisional jurisdiction under Sections 435 and 439 of Cr.PC in relation to a bail granting order passed by the learned ATC. Various provisions of the ATA vest in High Court the authority to exercise superintendent over ATC, including, *inter alia*, Section 19(7) of the ATA that requires that the report be placed before the Chief Justice of the High Court in the event that the trial is not concluded within a period of seven days, Section 28 that vests with the High Court powers to transfer case from one ATC to another, and Section 25 that creates a statutory right of appeal before the High Court against

the final judgment of the ATC. Even in the event that such provisions were not provided within the ATA itself, Article 203 of the Constitution provides that the High Court shall supervise and control all courts subordinate to it. In view of Section 203 of the Constitution read together with provisions of ATA and CrPC, the High Court is vested with the authority to exercise revisional jurisdiction in relation to orders and proceedings of the ATC. The scope of jurisdiction of the High Court under Sections 435 and 439 of Cr.PC has been enumerated by the august Supreme Court.

14. The scope of such jurisdiction came before the august Supreme Court in ***Mushtaq Ahmed vs. The State*** **(PLD 1966 SC 126)**, in which the following was held:

> *"…Under section 439 of the Criminal Procedure Code the High Court has a power to interfere upon information in whatever way received, as the section clearly says that it may do so in any case in which it has itself called for the record or which has been reported for orders or "which otherwise comes to its knowledge". These are words of wide import. In the present case the record of the case was placed before the learned Judge A in the course of his inspection and the facts of the case thus came to his knowledge. Under this section the High Court has also the right to exercise its power on its own initiative and there can be no warrant for the proposition that the High Court is debarred from examining the record suo moto."*

In relying on such judgment and reiterating the law laid down in it, the august Supreme Court in ***Dr. Waqar Hussain vs. The State (2000 SCMR 735)*** held the following:

> *"…So far as the power of the High Court under section 439, Cr.P.C. are concerned, it may be stated that it is not a power only but a duty whenever facts for its jurisdiction are brought to the notice of the Court, or otherwise come to its knowledge because the revisional jurisdiction is in the nature of corrective jurisdiction."*

In view of the law settled by the august Supreme Court, it is therefore not just within the power of the High Court to satisfy itself as to the correctness, legality or propriety of any findings or orders passed by the learned ATC, but has a duty to do so in order to ensure that justice has been served.

15. In view of the above, we hold that the High Court can consider the correctness, legality and propriety of a bail granting order in exercise of authority under Sections 435 and 439 of Cr.PC read together with Section 561(A) of Cr.PC. And as bail to an accused triable by the learned ATC is granted under Section 21-D of the ATA, Section 497(5) of Cr.PC has no application for purposes of cancellation of bail granted to an accused by the learned ATC.

16. Let us now consider the impugned order that has been challenged in the criminal miscellaneous application in which a reference has been made Section 497(5) of Cr.PC read together with Sections 435 and 439 of Cr.PC. We have already held above that Section 497(5) of Cr.PC has no application in considering

cancellation of bail granted by the ATC. But that this Court has jurisdiction under Sections 435 and 439 of Cr.PC to consider the legality of such order. The impugned order has been issued by the learned ATC in exercise of powers under the third proviso of Section 497 of Cr.PC read together with Section 21-D(4)(c) of the ATA on the basis of delay in conclusion of trial. The learned ATC has mis-appreciated the law in assuming that Section 497(1) of Cr.PC is applicable for purposes of grant of bail to the Respondent and it has further not taken into consideration the language within the third proviso of Section 497(1) of Cr.PC, which excludes its application to individuals accused of the offence of terrorism punishable by death or life imprisonment. We have already explained above that Section 497(1) of Cr.PC has no application for purposes of consideration of bail of an accused triable by ATC for which purpose the sole considerations are those provided under Section 21-D of the ATA. The learned ATC has further misperceived the scheme of the Section 21-D of the ATA in relying in Section 21-D(4)(c) of the ATA to consider the time the Respondent had spent into custody for purposes of admitting him to bail, in complete disregard of requirements of Sections 21-D(2) and 21-D(3) of the ATA. The learned ATC in the impugned order did not form any opinion that there was no reasonable basis to believe that the Respondent was guilty of the offence that he had been charged with. Forming such opinion was a necessary pre-requisite for taking into consideration the factors listed in Section 21-D(4) of the ATA to guide the discretion of the court in considering the Respondent’s bail application. The learned ATC also did not take into account the

negative considerations prescribed under Section 21-D(3)(a)(d) of the ATA and simply did not take into account the fact that the Respondent had already made an attempt to cross the Pakistan-Afghanistan Border in breach of conditions of transitory bail afforded to him and that in view of such background no reasonable opinion could not be formed that the Respondent would not fail to surrender to custody if he were to be enlarged on bail. In view of these circumstances, we find that the impugned order is perverse and suffers from material illegality and is therefore not sustainable in the eyes of law.

17. Given that the impugned order is liable to be set-aside in exercise of jurisdiction vested in this Court under Sections 435 and 439 of Cr.PC read together with Section 561(A) of Cr.PC, the question of whether or not Writ Petition No.1721 of 2019 is maintainable becomes largely irrelevant. However, as fervent objections have been raised by the Respondent to the manner in which the petition was entertained and to its maintainability, which prevented the Respondent's release from jail pursuant to the impugned order, we deem it necessary to address the Respondent's contentions.

18. An argument was raised by the learned counsel for the Respondent that this Court has no Suo Moto jurisdiction under Article 199 of the Constitution. There is nothing to gainsay such contention. The High Court has no Suo Moto jurisdiction under Article 199 of the Constitution. But in a case where there is an aggrieved party who brings a matter to the High Court that satisfies all necessary requirements of Article 199 of the

Constitution, merely because such application is not in proper form in compliance with all the requirements prescribed under the High Court Rules and Orders does not make the cognizance of such application exercise of suo motu jurisdiction by the High Court. In such matters all that the High Court does is relax the requirements in relation to filing of petitions and such relaxation of filing requirements does not transform the application filed by an aggrieved party in suo motu exercise of jurisdiction under Article 199 of the Constitution. That is all that happened in the instant case as well. An application was filed by an aggrieved person challenging the legality of the impugned order passed by the learned ATC and the court while relaxing filing requirements treated the said application as a petition and directed the office that it be placed before the Court, after which such application was numbered as Writ Petition No.1721 of 2019 and fixed before a Divisional Bench of this Court. Consequently, the proceedings in Writ Petition 1721 of 2019 were not suo motu proceedings.

19. Let us also state clearly that the mother or another family member of a deceased person, whose death if the subject-matter of a criminal trial, is an aggrieved person for purposes of Article 199 of the Constitution in relation to a trial court order that is not in accordance with law. The question came before the learned Sindh High Court in **Dur Muhammad vs. Bashir** ***(1983 Pcr.LJ Karachi 2053)*** wherein it was held that a person invested in the prosecution's case was entitled to move an application for cancellation of bail. The issue came before the learned Balochistan High Court in ***Haji Behram Khan vs. Akhtar Muhammad*** ***(1993 Pcr.LJ Balochistan 71),***

wherein it was held that any private person interested in prosecution of a case can't be restrained from invoking the door for justice and that application for cancellation of bail filed by such person could not be dismissed on such basis. Similar opinion was rendered by the learned Lahore High Court in ***Khalid Mahmood vs. Abdul Qadir Shah*** ***(1994 Pcr.LJ Lahore 1784)***, wherein it was held that the relative of the deceased person may file an application for cancellation of bail. The mother of Barrister Fahad Malik, whether or not she was the complainant or a witness in the trial of those accused of causing his death, is an aggrieved person in relation to an order that has been passed in favour of those accused of causing her son death. To hold otherwise would be a travesty. If the mother of a young man taken in the prime of his life is not a person aggrieved by the actions of the offenders, who else would be? Consequently, the objection to the maintainability on the basis that the petitioner is not an aggrieved person is without merit.

20. It is also settled law that the jurisdiction vested in the High Court under the Constitution is not circumcised by statutory provisions and the High Court can assume jurisdiction in the event that it is satisfied that there is no efficacious alternate remedy available to an aggrieved person. In view of the law regarding the scope of the High Court's jurisdiction under Section 199 of the Constitution, High Courts have exercised such jurisdiction to cancel bail granting orders by the learned ATC under Section 21-D of the ATA. In ***Muhammad Sharif vs. The State*** ***(2001 YLR Karachi 900)*** the learned Sindh High Court cancelled the bail granting order issued under Section 21-D of

the ATA in exercise of jurisdiction under Article 199 of the Constitution in view of the fact that the provisions of Sections 496, 497 and 498 of Cr.PC were excluded by Section 21-D of the ATA. Likewise, the august Supreme Court in ***Faiz Muhammad*** upheld the decision of the High Court in which bail by the learned ATC had been canceled. Notwithstanding the scope of High Court's jurisdiction under Article 199 of the Constitution which it regulates in view of the conditions prescribed therein and the guidance laid down by the august Supreme Court, we are of the view that this Court is vested with the jurisdiction and a duty to ensure the legality of orders passed by the learned ATC under Sections 435 and 439 of Cr.PC. And consequently the preferred course of action would be for the Court to exercise its revisional jurisdiction under the said provisions of Cr.PC in considering the legality and correctness of a bail granting order passed by the learned ATC under Section 21-D of the ATA.

21. It is also settled law that the High Court has ample authority to convert a revision into a writ and vice versa in a fit case as law laid down by the august Supreme Court in ***Muhammad Ayub vs. Obaidullah (1999 SCMR 394)***. The question of jurisdiction is a foundational question determining the legality of any judicial proceedings. However, where a court or tribunal has the requisite jurisdiction under any provision of law, merely because an application is filed by referring to an incorrect statutory provision is inconsequential and does not wrestle away the jurisdiction of the court or the legality of proceedings conducted by it. The High Court is vested with jurisdiction to supervise the ATC and exercise authority under

Articles 199 and 203 of the Constitution as well as under Sections 435 and 439 and 561(A) of Cr.PC and merely because a party file an application or petition refers to an incorrect provision under which jurisdiction is not vested in the High Court does not place any cloud over the legality of proceedings undertaken by the High Court.

22. In view of what is stated above, we will deem Writ Petition No.1721 of 2019 be an application under Sections 435 and 439 of Cr.PC and direct the office to number the same as criminal miscellaneous application, while allowing the same for the reasons stated above in relation to criminal miscellaneous application No.326-BC of 2019.

23. In view of the above, both of these criminal miscellaneous applications are ***allowed*** and the impugned order dated 30.04.2019 passed by the learned ATC is ***set-aside***.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(BABAR SATTAR)
JUDGE

Approved for reporting.

A. Rahman Abbasi.