

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL.MISC. NO.720-BC /2019

Muhammad Nazakat Hussain

VS

Raja Ali Nisar Abbasi and another

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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04

29.01.2020

Raja Mahfooz Ali Satti, Advocate for petitioner.
M/S Muhammad Umair Baloch, Asif Irfan & Raja
Nisar-ul-Haq Advocate along with respondent
No.1/accused.
Mr. Zohaib Hassan Gondal, State counsel with Shah
Nazar SI & Azmat Bhatti, P.S Koral, Islamabad.

GHULAM AZAM QAMBRANI, J

The petitioner [Muhammad Nazakat Hussain] seeks cancellation of bail granted in favour of accused/ respondent No.1, in case FIR No. 584/2018, dated 24.12.2018, under sections 324/34, 337-F (II), 337-F (I) PPC, registered at Police Station Koral, Islamabad.

2. Brief facts of the case are that the complainant/ petitioner lodged the FIR with the allegations that on 23.12.2018 at about 03.00 PM accused/respondent No.1 alongwith unknown accused, armed with pistol 30-bore came at spot on a motorcycle and fired with 30-bore pistol at son of complainant namely Ihtasham Nazakat who sustained injuries. Complainant and the friend of his son tried to catch them but they fled away from the spot while leaving the bike. Motive behind the occurrence has been alleged as the accused party forbade the son of complainant to have friendship with one Junaid, and for this reason, they severally threatened him, hence the instant FIR.

3. Learned counsel for the petitioner submits that learned Trial Court while passing the bail granting order has failed to appreciate that the accused/ respondent No.1 remained absconder for more than five months; that the impugned order is against the law and facts of the case; that the recovery was effected from the accused/ respondent No.1 mentioned in the FIR, but this fact has been ignored while passing the impugned order; that the impugned

order has been passed without applying the independent judicial mind; that accused/ respondent No.1 is misusing the concession of bail and constantly harassing the petitioner and his family.

4. On the other hand, learned counsel for the respondent No.1/ accused contended that the accused/ respondent No.1 did not misuse the concession of bail nor did he ever threaten the complainant or his family in any manner; that the FIR has been lodged against him on the basis of false and baseless allegations. The learned State Counsel opposed the contention of the learned counsel for the petitioner and supported the bail granting order passed by the learned Trial Court.

5. Arguments heard, record perused.

6. Minute perusal of the record reveals that the FIR was lodged after a delay of one day; the accused/ respondent No.1 was arrested on 02.05.2019 and nothing has been effected from him. Prima facie, no incriminating material is available on record against the accused. The investigation has already been completed and accused is no more required to the police for further investigation. The co-accused of respondent No.1 have already been discharged by the learned Judicial Magistrate. The guilt or otherwise of the accused/ respondent No.1 shall be determined after recording of prosecution evidence by the learned trial Court. With regard to threats extended by the respondent No.1/ accused to the prosecution witnesses, the petitioner failed to bring on record any report with regard to extending of threats. Further the absconsion itself cannot be used to kill each and every right of accused and it should not come in the way for refusal of bail and the same cannot be made a ground for cancellation of bail. Mere absconsion of the accused/ respondent No.1 is not sufficient ground to connect him with the offence.

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 miscarriage of justice. Considering the case of present respondent No.1/ accused for the grant of bail on the above touchstone, I am of the view that the learned District & Sessions Judge has rightly exercised the grant of bail to the respondent No.1 / accused.

8. So far as the allegation of misuse of the concession of bail by the accused/ respondent No.1 is concerned, in this regard the petitioner has miserably failed to bring on record any material evidence. The petitioner has also failed to point out whether after grant of bail the accused/ respondent has tampered with the prosecution evidence or misused the concession of bail. In this regard reliance has been placed on the Judgments titled “ The State Vs Khalid Mehmood” [2006 SCMR 1265] & “ Ahsan Akbar Vs The State” [2007 SCMR 482].

9. For the foregoing reasons, no reasonable grounds exist for cancellation of bail granted to the accused/ respondent No.1, therefore, the instant petition being devoid of force, is hereby dismissed.

10. 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