

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Crl. Misc. No.397-BC of 2019

Kashif Khan
Versus
Mian Nooh Ali Shah, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.09.2020	Mr. Ashraf Ali Awan, Advocate for the petitioner. Mr.Sami Ullah Wazir, Advocate alongwith respondent No.1 in person. Mr. Hammad Saeed Dar, State Counsel with Naseer, Sub-Inspector.
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Ghulam Azam Qambrani, J.:- The petitioner (Kashif Khan) seeks cancellation of bail granted in favour of accused/ respondents No.1 (hereinafter be called as “***respondent***”), in case F.I.R No.77, dated 18.04.2019, offence under Sections 420, 467& 471 PPC, registered at Police Station Shahzad Town, Islamabad.

2. Brief facts as narrated in the F.I.R are that the complainant purchased a corner plot measuring 09 Marlas bearing Khewat No.240 Khatooni No.571 situated in Mouza Chatha Bakhtawar, Islamabad, against consideration of an amount of Rs.64,00,000/- (sixty four lac) from respondent/ accused, and in this regard, he also entered into an agreement to sell through Stamp No. 320 dated 30.07.2016 with his commission agent Zahir Shah due to non-availability of said Mian Nooh Ali Shah, who duly received his commission amount of Rs.80,000/- from the complainant and showed a copy of “*Farad*”, wherein the name of Mst. Shameem

Akhter was not mentioned. That on 12.08.2016, Mian Noor Ali Shah alongwith Mst. Yasmin widow of Amir Zohaib received total consideration and executed registered sale deed in his favour with commitment that in the evening, possession will be delivered to him but till date, a number of jirgas have been held for delivery of possession of said plot to the complainant but in vain. Said Mst. Shameem Akhter is the present possessor of said plot and claimed herself to be a co-sharer of the said plot, hence, the above said F.I.R. The respondent moved bail before arrest before the learned Additional Sessions Judge-VI, Islamabad- East, which was confirmed vide order dated 20.05.2019, hence the instant petition.

3. Learned counsel for the petitioner, *inter-alia*, contended that respondent is misusing the concession of bail; that he has received huge amount of Rs.64,00,000/- from the petitioner; that the respondent is a property dealer and in connivance of others, defrauded the petitioner just to grab money from the petitioner; that respondent is pressurizing the petitioner to withdraw the criminal case against the accused and threatening the witness of the case for dire consequences, if they come to Court for adducing the evidence. Further averred that impugned order dated 20.05.2019 is result of non-reading and misreading of the record, based on surmises and conjectures and is against the law and facts of the case, hence, is liable to be recalled. Next contended that respondent also concealed the actual facts from the Hon'ble Court that he is a property dealer; that if the impugned order is not withdrawn, the petitioner shall suffer loss and purpose of the case will be badly affected.

4. Conversely, learned counsel for the respondent contended that the respondent has been involved in the instant case with mala fide intention and ulterior motive just to harass and humiliate him; that the offences mentioned in the F.I.R do not fall within the prohibitory clause of section 497 Cr.P.C; that there is inordinate and unexplained delay more than two years in lodging of the F.I.R; that the main co-accused has been granted post arrest bail by the learned Judicial Magistrate vide order dated 04.05.2019; that as per F.I.R, no overt act is attributed to the respondent; that no incriminating evidence is available on record against the respondent, therefore, the learned Additional Sessions Judge, Islamabad-East, has rightly confirmed the bail to the petitioner vide impugned order. The learned State counsel submitted that the investigation has been completed and the challan has already been submitted before the learned trial Court and supported the impugned order.

5. Arguments heard, record perused.

6. Version of the petitioner is that he entered into an agreement to sell with the respondent for land measuring 09-Marlas for a total sale consideration amount of Rs.64,00,000/- whereas, the agreement to sell was executed by Zahir Shah, Commission agent, in the absence of the respondent, who also received Rs.80,000/- as his commission from the petitioner and on the basis of the sale agreement, sale deed was executed in favour of the petitioner on 12.08.2016 but possession of the same has not yet been handed over to the petitioner.

7. Perusal of the record reveals that as per report of the Patwari dated 17.04.2019, land measuring 09 Marla has been transferred in favour of the petitioner through Mutation No.5591 on the basis of registered sale deed No.14508 dated 12.08.2016 on behalf of Mst. Yasmin Bibi widow 1/8 share, Faizan Zohaib son 2-share, Palwasha Zohaib daughter of Amar Zohaib 7/8 share in favour of Kashif Khan son of Gull Rojaan for consideration of Rs.1,00,000/- (one lac) on 29.09.2016 and as per record through an agreement to sell, the said land measuring 09-Marlas has been further transferred on behalf of the petitioner Kashif Khan in favour of Javaid Iqbal for a total sale consideration of Rs.71,00,000/-. As such, keeping in view the facts and circumstances of the case, the learned Additional Sessions Judge, Islamabad-East, has rightly confirmed the pre-arrest bail moved by the respondent vide impugned order dated 20.05.2019.

8. There is no evidence that the respondent has tampered with the prosecution evidence or misused the concession of bail. The bail can only be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for the grant of bail. In this regard, reliance is placed on the Judgments titled Muhammad Akram Vs. Zahid Iqbal and others (2008 SCMR 1715), "Muzaffar Iqbal Vs Muhammad Imran Aziz and others" (2004 SCMR 231), "The State Vs Khalid Mehmood" (2006 SCMR 1265), "Shahneel Gul and two others vs. The State" (2018 YLR 999) and "Ahsan Akbar Vs The State" (2007 SCMR 482).

9. The considerations for the grant of bail are quite different from the considerations for cancellation of bail. Once the 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 into miscarriage of justice whereas, the petitioner has failed to establish any such ground, in the instant case.

10. I have also gone through the impugned order dated 20.05.2019, which is based upon legal principles and no illegality has been observed, therefore, requirement of Section 497(5) Cr.P.C is not visible, as no perversity, illegality or violation of Court order or tampering with prosecution evidence of this case has been established against the respondent, therefore, instant petition being misconceived is hereby **dismissed**.

11. 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

Announced in open Court on this 11th day of September 2020.

JUDGE

Rana M. Iq.