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

Criminal Misc. No. 812-BC/ 2019
Sumail Mehboob
Vs
Muhammad Ilyas, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.02.2020	Mr. Mudassir Khalid Abbasi, Advocate for petitioner /complainant, Mr. Tahir Hameed Khan, learned State Counsel with Zafar Iqbal ASI, P.S. Koral, Islamabad. Mr. Muhammad Zareef Raja Advocate for respondent No.1.

Through this petition under Section 497(5) Cr. PC, petitioner/complainant assails order dated 31.10.2019 passed by learned Additional Sessions Judge-VI, Islamabad-East, whereby respondent No.1 {Muhammad Ilyas} was allowed post arrest bail in case FIR No.407 dated 04.09.2019 under section 489-F PPC, Police Station Koral, Islamabad.

2. Learned counsel pressed this petition, *inter-alia*, on the grounds that the reasons, made basis to extend concession of bail, are perverse being contrary to the ground situation. Highlighting the same learned counsel asserted that it is a matter of record that respondent No.1 had filed an application in terms of Sections 22-A&B Cr.P.C, on the allegation of tempering the cheque in question; said matter was probed into and the SP Investigation Khushab on 20.08.2019 submitted report testifying the fact that the complainant party/petitioner had purchased land from respondent No.1 for consideration of

Rs.30,00,000/- but the deal could not be materialized and in order to repay the amount issued the cheque in question to the tune of Rs.1,500,000/- but it was dishonoured.

3. It is further asserted that the observations based on wrong premises cannot be made basis to extend concession of bail and therefore, the same being perverse, arbitrary and fanciful are liable to be set-aside. It is added that in an offence, not falling within the ambit of prohibitory clause, grant of bail as a matter of course is not of universal application as each case is required to be seen through its own facts and circumstances. Learned counsel is of the view that though only tentative assessment is permissible while dealing with a bail application yet the fact remains that the said assessment should based on true import of the material collected by the prosecution and if the interpretation had wrongly been made, the case then, of course, calls for interference in terms of section 497(5) Cr.P.C. Learned counsel fortified his submissions by placing reliance upon case law cited as Shameel Ahmad. Vs. The State {2009 SCMR 174}, wherein it is laid down that grant of bail, no doubt, is a discretion granted by a court, but its exercise cannot be arbitrary, fanciful or perverse.

4. On the other hand, learned counsel for respondent No.1 supported the impugned order. It is argued that explanation of the facts, as observed by the learned ASJ while passing the impugned order are the narration of the events, in accordance with the assessment of the court itself and either of the side can interpret the same in their own favour.

According to the learned counsel, the narration to the effect that it was the father of the complainant, who entered into sale agreement with respondent No.1 in 2017 is matter of record and need not to be affirmed or negated by either of the side according to their own whims. It is further argued that the question of tempering the cheque, too is tentative assessment, {not based on any opinion of the expert} and, therefore, to discard the same would amount to interpret the observation impugned herein in own words as against the learned court.

5. Learned counsel further asserted that tentative assessment in absence of sufficient material or illegality, cannot be interfered with. The grant of bail on merits on the basis of tentative assessment cannot be allowed to be recalled as a matter of course, rather for nullifying the same, strong and exceptional grounds are required. Learned counsel refers case law cited as Shabbir Hussain. Vs. The State and another {2017 MLD 1861} and Ali Ahmad Sial. Vs. Nazir Ahmad {2016 YLR Note 202}

6. Learned State Counsel while adding to above asserted that offence does not fall within the ambit of prohibitory clause; the guilt or innocence of respondent No.1 will be proved after trial and the tentative assessment, considering the circumstances of the case are well reasoned and, does not call for any interference.

7. Heard the learned counsel for parties and perused the record with their able assistance.

8. According to the allegations, set forth in FIR No.407/2019, petitioner/complainant entered into sale agreement regarding landed property through a

writing with respondent No.1/accused and paid Rs.3,000,000/- (Three Million Rupees) but the latter got an injunctive order and subsequently in order to repay the amount received, issued cheque bearing No.52263866 on 23.03.2019 to be drawn at HBL Nowshera Branch but the same stood dishonoured on presentation for want of funds.

9. Record reveals that challan of the subject case has been submitted before the court of competent jurisdiction on 29.10.2019 where-after trial commenced and the next date is 18.02.2020. The agreement was between father of the petitioner/ complainant and accused/respondent No.1. Criminal jurisprudence rightly lays emphasis that liability of criminal nature, if any, same is only to the extent of individual concerned and if any benefit from that subject i.e. when offence is tried and wrong doer is held responsible for certain benefit to victim, then same too goes to said individual in whose favour right was created. In present case agreement which gave birth to cheque in question, the subject matter in issue is offshoot of that agreement which is between father of the petitioner/complainant and respondent No.1 and not with complainant. Tempering/overwriting upon the cheque is quite visible. It was thus rightly observed by the learned ASJ that the case falls within the ambit of further inquiry and when matter falls within the ambit of further inquiry, then bail becomes matter of right of an accused.

10. Law provides that when challan has been submitted and the trial has commenced, to recall bail granting order is not considered as expedient. In this

respect I am benefited with the dictum laid down by the Hon'ble Apex Court in case titled Anti Narcotics Force through Regional Director. Vs. Syed Paris Ali {2019 SCMR 2027} wherein it is held that:-

> *"The above report, apparently, does not suggest any serious health disorder beyond hemorrhoids nor it appears to require any treatment possibly not required in jail hospital. It does not suggest any special procedure for the respondent as well. Not every ailment entitles the accused to be released on bail such as malady is found life threatening or without possible cure in the prison.* ***Consideration that weighed with the High Court does not commenced for approval particularly after respondents failure in the High Court, however, since the trial has commenced, likely to be concluded soon and concession has not been abused, we do not consider it expedient to recall the bail as the provisions of subsection 5 of section 497 Cr.PC*** *of the Code of Criminal Procedure, 1898 are not punitive in nature. Petition fails. Dismissed."*

11. In addition, it is observed that no evidence has been produced, wherein it is alleged that concession of bail has been misused or accused is causing threat to the witnesses, rather learned counsel argued only to the extent that observations of learned ASJ are perverse. This argument appears to be misconceived because on the basis of tentative assessment of the material, case appears to be one of further inquiry, as held by the learned ASJ.

12. I am cognizant of the fact that matter before this Court is where petitioner seeks cancellation of bail against an order granting bail to respondent No.1. This case is one of post arrest bail and not of pre-arrest bail in an offence which even does not fall within the prohibitory clause of section 497(1) of Cr.P.C. The punishment for the offence alleged is upto three years. The respondent No.1 had been in

jail since his arrest, till released on bail through the order, impugned herein. In such like situation, normally bail is not cancelled. Guidance is taken from case law titled Tahir Javed @ Tara. Vs. The State {2017 SCMR 1946}, wherein it is held that:-

> *"The investigation of the present criminal case has already been finalized and a Challan has been submitted and this Court is generally slow in canceling an accused person's bail at such a stage of a criminal case. The reasons recorded by the High Court for admitting respondent No. 2 to post-arrest bail have not been found by us to be averse to the settled principles governing the law of bail. It is trite that considerations for grant of bail and those for its cancellation are entirely different. No allegation has been leveled before us regarding any misuse or abuse of the concession of bail by respondent No. 2. In these circumstances no occasion has been found by us for interference with the exercise of jurisdiction and discretion in the matter by the High Court. This petition is, therefore, dismissed and leave to appeal is refused."*

13. It is trite law that considerations for grant of bail and for cancellation of bail are entirely different. Accused has been enjoying freedom by way of lawful order passed by court of competent jurisdiction.

14. It is also matter of record that the agreement was statedly entered into between the parties on 15.02.2017, while the matter was reported to the police on 04.09.2019 without explanation of delay. The dates on the cheque are also disputed. The contents of FIR reveal that civil litigation is pending between the parties. These all facts suggest that the case against the respondent is of further inquiry and bail in like situation becomes a matter of right.

15. The question before the Court is that respondent No.1 is in possession of favourable order from the Court of competent jurisdiction in an offence which is not even falls in prohibitory clause of Section 497

Cr.P.C. Why this Court should interfere in that order? Whether any beneficial purpose would be served by recalling bail granting order? Surely, as per law, no purpose is served, if impugned order is recalled.

16. Therefore, in the light of facts and law discussed above, no beneficial/lawful purpose would be served by recalling the bail granting order. The instant petition being devoid of merits is dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail