

7/24

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

**Criminal Petitions No.528-L and 1068 -L of 2023**

(Against orders dated 05.05.2023 and 06.09.2023, passed by the  
Lahore High Court, Lahore in Criminal Miscellaneous Nos.22217-B and 41247-B of 2023)

Shaukat Ali  
(in Crl.P.No.528-L/2023)

Azeem Hassan Mushtaq  
(in Crl.P.No.1068-L/2023)

...Petitioner(s)

**Versus**

The State through Prosecutor General,  
Punjab, Lahore and Ali Ashraf  
(in Crl.P.No.528-L/2023)

The State through Prosecutor General,  
Punjab, Lahore and Shaukat Ali  
(in Crl.P.No.1068-L/2023)

...Respondent(s)

For the Petitioner(s) : Mr. Irfan Sadiq Tarar, ASC  
(in Crl.P.No.528-L/2023)  
Ch. Waseem Ahmed Gujar, ASC  
(in Crl.P.No.1068-L/2023)  
Through video link Lahore

For Respondent No.2 : Mr. Javed Imran Ranjha, ASC  
along with petitioner  
(in Crl.P.No.528-L/2023)  
Through video link Lahore  
Mr. Irfan Sadiq Tarar, ASC  
(in Crl.P.No.1068-L/2023)

For the State : Mr. Muhammad Jaffar,  
Additional P.G. Punjab  
Through video link Lahore

Date of Hearing : 15.01.2024.

## **JUDGMENT**

### **Cr.P. No.528 -L of 2023:**

**Syed Hasan Azhar Rizvi, J.** Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/complainant, namely Shaukat Ali, assails the order dated 05.05.2023 passed by the Lahore High Court by which post arrest bail was granted to the respondent, namely, Ali Ashraf.

2. Succinctly, facts of the case are that the petitioner/complainant lodged an FIR No. 192 dated 10.01.2023 registered under Sections 302, 34, 324, PPC at Police Station Chung, District Lahore on the allegations that the respondent along with his co-accused while armed with respective weapons in furtherance of their common object assaulted on the complainant party on 10.01.2023 at 7:30 p.m. in the area of Gujranwala Chung Punjgrain within the territorial jurisdiction of the above referred police station and thereby caused firearm injuries to Danish Ali, nephew of the petitioner, who later on succumbed to the injuries at the spot. The motive behind the occurrence is that Danish Ali deceased, the complainant and others used to forbid the accused persons from selling narcotics in the vicinity and due to this grudge, the accused persons with their mutual consultation committed murder of Danish Ali.

The respondent applied for the post arrest bail before the Additional Sessions Judge, Lahore which was declined *vide*

order dated 30.03.2023. Being aggrieved, the respondent approached the Lahore High Court by filing Criminal Miscellaneous No.22217-B of 2023 which was allowed *vide* order dated 05.05.2023 impugned herein.

3. Learned counsel for the petitioner/complainant contends that the impugned order has been rendered without touching the merits of the case; that the respondent/accused has been nominated in the FIR with a specific role; that the respondent is extending threats of dire consequences to the petitioner; that the respondent is harassing the petitioner and his witnesses not to pursue the case, thus misusing the concession of bail; that the impugned order is against law and facts; that the respondent has been declared guilty by the investigating officer and that sufficient incriminating material is available on the record to connect the respondent with the commission of offence.

4. Learned Law Officer while supporting the contentions raised by the learned counsel for the petitioner submits that the recovery of weapon of offence has been affected from the respondent. Whereas, learned counsel for the respondent has faithfully defended the impugned order and submitted that the empties allegedly recovered from the respondent did not match with the alleged weapon of offence.

5. We have heard the learned counsel for the parties so also the learned Law Officer at a considerable length and

scanned the material available on the record with their able assistance.

6. It reflects from the record that the respondent has been nominated in the FIR with a specific role and the recovery of weapon used in commission of offence has been affected from the respondent. The medical evidence fully supports the stance taken by the prosecution.

7. The learned Judge of High Court solely on the basis of an opinion of the Investigating Officer has passed the impugned order and granted post arrest bail to the respondent. The petitioner as well as Tariq Sadiq son of Muhammad Sadiq, eye witnesses, have fully implicated the respondent while deposing that the respondent with the intent to kill Danish Ali has made straight firing upon him. Furthermore, after registration of FIR, the investigation was handed over to one Imran Haider, Inspector, who failed to investigate the case fairly/impartially and became partisan with the accused persons and gave his opinion regarding non-involvement of the accused persons in the offence. It is evident from the statement of the petitioner recorded under Section 200 Cr.P.C. before the Additional Sessions Judge Lahore available on the record that the petitioner/complainant moved an application dated 28.03.2023 to the D.I.G. (Investigation) Lahore for the change of investigation. However, given the fact that the accused persons are highly influential, Investigating Officer was reluctant to collect necessary evidence, as a

consequence, complainant has lost the trust in the investigation.

8. The complainant filed a private complaint before the Judicial Magistrate, Lahore, which was, accordingly forwarded to the Additional Sessions Judge Lahore *vide* order dated 13.04.2023.

9. The learned Additional Sessions Judge Lahore *vide* order dated 12.05.2023 found that sufficient incriminating material is available against all the accused including the respondent. As regard the respondent being a highly influential person WHO is extending threats of dire consequences to the petitioner, we observe that it amounts to the misuse of concession of bail, thus in the circumstances, the impugned order cannot sustain. This Court has dealt with the proposition *qua* cancellation of bail in the case reported as **Amir Faraz versus The State (2023 SCMR 308)**, relevant extracts there-from are reproduced below for ease of reference:-

*"6. .... No doubt, the opinion of the Investigating Officer has some persuasive value, if the same is based upon a strong and concrete material which is lacking in the present case."*

8. *It is settled that in criminal matters, each case has its own peculiar facts and circumstances and the same has to be decided on its own facts. In the present case, the petitioner is specifically nominated in the FIR for causing firearm injury on the head of the deceased and the said injury was spelt out from the medical evidence. He was found involved in the commission of offence in the first investigation and the ipse dixit of the second Investigating Officer, especially in the above mentioned circumstances, had no persuasive value. Although*



learned counsel for the respondent has relied upon certain judgments and even the learned counsel for the petitioner has also placed reliance on certain judgments qua opinion of the Investigating Officer but we observe that in all the said judgments, the basic thing, which has to be considered by the Court, is whether the said opinion is based upon cogent and concrete material. In the absence of any material/data no credit can be given to such ipse dixit of the Police Officer. If the plea i.e. ipse dixit of the police, on the basis of which the respondent has been released on bail is accepted, the same would amount to discredit the version of the eye-witnesses at this initial stage of the case which of course is not permissible in the peculiar circumstances of the case. The practice adopted by the learned High Court through the impugned order is not appreciable. The High Court while granting bail to the respondent has ignored the relevant material indicating, prima-facie, involvement of the accused in the commission of the crime and took into account irrelevant material which had no nexus to the question of grant of bail to the accused. It is settled law that bail granting order could be cancelled if the same was perverse. An order which is, inter alia, entirely against the weight of the evidence on record, by ignoring material evidence on record indicating, prima facie, involvement of the accused in the commission of crime, is always considered as a perverse order, which is in present case as material evidence on the record brought by prosecution promptly, was not given any weight by the High Court and a perverse order was passed upon a baled opinion of second Investigating Officer.

11. .... Even otherwise, no hard and fast rule can be laid down that bail should not be cancelled merely for the reason that the trial has commenced or is likely to commence because every case is to be examined in the light of its own facts, and the crucial question that arises for determination would be as to whether a person is entitled to grant of bail under the provision of section 497, Cr.P.C. which, as already observed, the respondent was not entitled to, especially, when there is sufficient material available against him in the shape of ocular account as well as the medical evidence and the circumstance that he along with other accused committed the murder of his two real brothers. The judgments relied upon by the learned counsel for the respondent, to this effect, having different facts and circumstances, could not be applied in this

case.

12. All the above mentioned circumstances have been ignored by the High Court while granting bail to the respondent, record to that extent has not been examined by the High Court and same order can be considered as perverse, because the material collected by the first Investigating Officer, on the day first, was totally ignored by the High Court while granting bail in such a double murder case."

10. For what has been discussed above, this petition is converted into an appeal; allowed; the impugned order dated 05.05.2023 is set aside and the bail granted to the respondent is hereby recalled/cancelled.

11. The above observations are tentative in nature and will have no bearing upon subsequent proceedings during the trial as the trial Court is required to decide the case on its own merits without being influenced by any observation made in this order.

**Cr.P. No. 1068-L of 2023:**

12. After arguing the matter at some length, learned counsel for the petitioner opts to withdraw this petition. Dismissed as having been withdrawn.

**Islamabad the,**

15<sup>th</sup> January, 2024.

Not Approved for reporting

Ghulam Raza/\*