

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

CRIMINAL MISC. APPEAL NO. 30 OF 2022 IN
IN
CRIMINAL PETITION NO. NIL OF 2022

Atif Ali and others

VERSUS

Abdul Basit and another

... Applicants

... Respondents

PRAYER:

"this Court may graciously by accepting this appeal set aside order dated 14.07.2022 of the office of the learned Registrar and instant Criminal Petition may be entertained and numbered accordingly and the same be placed before an Hon'ble Bench of this Court for decision on merits in accordance with law. Any other relief which this Court deems fit and proper may also be awarded to the applicants to meet the ends of justice."

For the Applicants: Mr. Kamran Murtaza, Sr. ASC

For the Respondents: Nemo

Date of Hearing: 27.09.2022

ORDER

The applicants were allowed bail before arrest by the learned ASJ, Dalbandin in case registered vide FIR No. 41/2021 under Sections 302/324/147/148/149 PPC at Police Station Dalbandin but their bail was recalled/cancelled by the learned High Court vide order dated 30.06.2022. Their pre-arrest bail petition before this Court has not been entertained by the office by placing reliance on Order XXIII Rule 8 of the Supreme Court Rules, 1980 and a judgment of this Court reported as Muhammad Adnan Vs. The State (2015 SCMR 1570), which led to filing of instant Criminal Miscellaneous Appeal.

2. I have heard learned counsel for the applicants and have perused the relevant case law.

3. The office objection raised by the Institution Officer of this Court is misconceived. The bar contained in first proviso to Rule 8 Order XXIII of the Supreme Court Rules, 1980, does not apply to the case in hand because of the reason that no order of imprisonment or fine as contained in Rule 8 *ibid* is challenged before this Court and, as such, the said bar is not applicable to the present case. It would be in order to reproduce the said provision, which reads as under:-

"8. Pending the disposal of a petition under this Order, the Court may direct that execution of any order for imprisonment or fine, against which leave to appeal is sought, be stayed, on such terms as the Court may deem fit:

Provided that unless surrender is first made to an order of imprisonment, as above, the petition shall not be entertained.

Provided further, petitions involving bail before arrest may be entertained and posted for hearing if the petitioner undertakes to appear and surrender in Court."

4. The case of the applicants is entirely on different footing and the same is not sensitized by first proviso to Rule 8, which requires surrender to an order of imprisonment before availing the opportunity of filing petition before this Court. In the instant case, the matter pertains to recalling of the order of pre-arrest bail granted to the applicants by the learned Trial Court. In this regard, my view is fortified by the judgment of this Court reported as Zahid Vs. The State (PLD 1991 SC 379) wherein it has been held that bar contained in Rule 8 Order XXIII does not apply in such like cases. It would be advantageous to reproduce relevant portion of the judgment, which reads as under:-

"It is manifest from the terms of the first proviso that unless surrender is made to an order of imprisonment the petition shall not be entertained.

Now in this case there is no order of imprisonment that is challenged and the order which is challenged is the order canceling the bail granted to the appellants by the Additional Sessions Judge. Accordingly, the bar contained in the first proviso of Rule 8 does not apply in the circumstances of the present case."

5. Even otherwise, I have noted that in the instant case, second proviso to Rule 8 would be applicable, which states that the petitions involving bail before arrest may be entertained and posted for hearing if the petitioner undertakes to appear and surrender in Court. Learned counsel for the applicants stated at the bar that the applicants are ready and willing to appear and surrender before this Court. Reliance in this regard is placed on the case of Zahid Afzal Vs. The State (PLD 1991 SC 382) wherein in similar situation, when the petitioners surrendered themselves before this Court, the petition for bail before arrest was entertained by this Court.

6. In view of the above, I am of the considered view that the office objection raised by the Institution Officer is not sustainable in the eye of law and the same is overruled. The instant Criminal Miscellaneous Appeal is allowed. Office is directed to entertain the petition and, as it is a bail petition, fix the same in court in the next week.

(Justice Sayyed Mazahar Ali Akbar Naqvi)

Approved For Reporting