

JUDGMENT SHEET

***IN THE PESHAWAR HIGH COURT,
BANNU BENCH.***

(Judicial Department)

Cr. Misc:/BCA No. 16-B of 2015.

JUDGMENT

Date of hearing _____ 09.06.2015 _____.

Appellant-Petitioner: **M. Shafiq Khan by Mr.
Inam Ullah Khan
Kakki, Advocate.**

Respondent: **By Mr. Bahir-ur-
Rehman Burki,
Advocate.
State by Qudrat Ullah,
AAG.**

MUHAMMAD YOUNIS THAHEEM, J.-

Muhammad Shafiq Khan the petitioner seeks
cancellation of pre-arrest bail of accused/
respondent Inamullah granted by learned
Additional Sessions Judge-I, Bannu vide order
dated 14.02.2015 in case FIR No. 456 dated
27.12.2014 under sections 324/109/34 PPC
Police Station Township District Bannu.

2. Brief facts of the case as per FIR are that the complainant Muhammad Shafiq Khan reported the matter to the local police to the effect that on 27.12.2010⁴ at 20.00 he alongwith his brother Shahidullah Khan and other inmates of the house were present in room, meanwhile Shahidullah Khan started firing at him with 30 bore pistol, as a result of which he was hit at his left foot and could do nothing being empty handed. Accused Shahidullah Khan after the commission of offence decamped from the spot. Motive alleged by the complainant was that, he has no enmity with Shahidullah whereas the occurrence took place on the abetment of his maternal aunt Mst. Asari Jana and her husband Inamullah. After release of the accused Shahidullah on bail, the accused/ respondent voluntarily surrendered before the Court by applying for pre-arrest bail, which was confirmed

on 14.02.2015, hence, the instant Bail Cancellation Petition.

3. Learned counsel for petitioner argued that respondent has been wrongly extended the extra ordinary concession of pre-arrest bail by learned lower court without pointing out any malafide on the part of the prosecution; that accused is directly charged in the FIR for abetting the accused Shahidullah; that no notice has been served upon the complainant and the learned lower court without hearing the petitioner confirmed Pre-arrest bail of accused/ respondent, hence, the accused/ respondent was not entitled to the concession of pre-arrest bail.

4. As against that, learned counsel for respondent vehemently opposed the contentions of learned counsel for petitioner by arguing that the accused/ petitioner is only charged for abetment and when principal accused has been

released on bail on the basis of compromise the case of accused/ petitioner has become one of further inquiry and the learned trial court was justified to extent the extra ordinary concession of pre-arrest bail to respondent.

5. Valuable arguments of both the learned counsel for the parties, Asstt: A.G for the state heard and record perused.

6. Perusal of record reveals that on the eventful day in the house, accused Shahidullah fired at his brother/ complainant Muhammad Shafiq as a result of which he was hit at his left foot. The allegation of complainant is that the occurrence took place on the instigation of Mst. Asari Jana and her husband Inamullah. Admittedly at the time of occurrence, the accused/ respondent Inamullah was not present in the house nor has the complainant mentioned any source of his satisfaction from which it could be

deduced that accused/ respondent has participated in the crime of abetment. Further co-accused Shahidullah has already been released on bail on the basis of compromise deed Ex:PB submitted by the complainant and against which no bail cancellation application has been moved. Rather pre-arrest bail of accused/ respondent has been questioned through instant petition. It has once for all been settled in case titled **“Muhammad Ramzan Vs Zafrullah (1986 SCMR 1380),** that when all the accused are ascribed identical role, out of which one set of accused is granted post arrest bail and the other one is extended the concession of pre-arrest bail and complainant chooses to challenge the pre-arrest bail of one set of the accused, it shall not be cancelled because they would again be enlarged on post arrest bail on the principle of rule of consistency, as their co-accused have already been released on bail. As, in the instant case the bail of accused/ respondent cannot be recalled on technical ground, when it is vividly

seen that he would be enlarged on bail just after his arrest on the rule of consistency.

7. So far as contention of learned counsel for the petitioner that the petitioner has not been served with any notice and the impugned order has been passed at his back, which is against the basic principle of natural justice that no one should be condemned unheard. Record reveals that two notices were issued to the petitioner/ complainant, but he did not appear. Co-accused Shahidullah and complainant/ petitioner Muhammad Shafiq are brothers inter se. Co-accused Shahidullah is principal accused, while present accused/ respondent is charged for abetment. When principal accused has been released on bail on the basis of compromise and his bail has not been challenged by moving any bail cancellation petition, hence, not appearing the petitioner in the case of present accused/ respondent seems to be with reason and the petitioner could not take

its benefit, in such facts and circumstances of the case.

8. Further lower court could not keep the petition pending for an indefinite period to procure the personal service of the petitioner as under the National Judicial Policy, specific time has been provided for disposal of bail petitions. The impugned order is based on merits free from any unilateral findings rather the same is passed on merits on proper assessment of the material available on record. When principal accused has been enlarged on bail on the basis of compromise, contesting the case of accused/ respondent by the complainant does not seem

free from any mala fide. Concession of pre-arrest bail is always extended in the cases of mala fide and ulterior motive on the part of complainant/prosecution to save the innocent people from their unjustified arrest and humiliation at the hands of police, which principle is fully attracted to the instant case, as such, respondent/accused has rightly been extended the concession of pre-arrest bail by the learned lower Court. Ref. “Syed Muhammad Firdaus and others Vs the State” (2005 SCMR 784).

9. No other ground such as any misuse of concession of bail or tampering with the prosecution evidence or extending threats to complainant by the accused /respondent has been urged. Besides that once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds are required for cancellation thereof. Ref: “Muzaffar Iqbal Vs Muhammad

Imran Aziz and others” (2004 SCMR 231).

Learned counsel for petitioner has failed to point out any exceptional circumstance, which may warrant interference of this court in bail granting order.

10. What has been discussed above the learned counsel for the petitioner has failed to point out any illegality or wrong exercise of discretion to convince this Court for interference in the impugned order. Resultantly, this petition being without any force is hereby dismissed.

Announced
09.06.2015

J U D G E