

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M B.C.A No. 110-M/2021.

Mst. Reema Bibi.....(Petitioner)

vs

Muhammad Sohail and others.....(Respondents)

Present: Mr. Aurangzeb Khan, Advocate for the petitioner.

Mr. Fazal Karim, Advocate for the respondents No.1 & 2/accused.

Mr. Saeed Ahmad, Asst:A.G for the State.

Date of hearing: 23.11.2022

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. Through the instant petition, Mst. Reema Bibi ("the petitioner") wife of Khushid Ali, a resident of Najeeb Abad, Danduno Qilla, Rahimabad, Mingora, District Swat, seeks cancellation of bail, granted to the respondents/accused, namely, Sohail Khan and Chaman Khan, by the learned Additional Sessions Judge/Izafi Zila Qazi-II, Swat, vide his order passed on 24.11.2021.

2. The petitioner registered a criminal case bearing FIR No.1521 on 14.11.2021 against the respondent/accused Muhammad Sohail Khan and Chaman Khan and two others u/ss.324/34/337-F(v)/337-A(iii)/336, PPC in PS Rahimabad.


3. Facts of the case shortly are that on 14.11.2021, the petitioner/complainant in injured condition reported the occurrence to the local police and stated in her report that for the last 25/30 days, there was a matrimonial dispute between her brother, namely, Rustam Khan with his wife Mst. Asma Gul. On the eventful day, the respondents/accused alongwith their co-accused Mst. Neghat Bibi wife of Salim Khan and Mst. Asma Gul wife of Rustam Khan, residents of Gulkada No.2, Saidu Sharif, came to her house and rang the bell of the door of her house. When she opened the outer door, she saw all the four accused standing. All of a sudden, the respondent No.1/accused Muhammad Sohail Khan, struck on her mouth with some object that injured her teeth. Similarly, the respondent No.2/accused Chaman Khan fired at her with his pistol as a result of the firing, she got injured on her left arm.

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4. I have heard arguments of learned counsel for the parties as well as the learned Assistant Advocate General, for the State and perused the record.

5. Needless to say, the grounds for cancellation of bail are altogether different from the

grounds for the grant of bail in a criminal case. In “Abdul Rashid Khan v. Zahoor Ahmad Malik & others” reported as PLD 2011 SC 2010 (Supreme Court of Pakistan), the august Supreme Court of Pakistan, has observed that once bail has been granted on merits by a competent Court, its cancellation requires strong and exceptionable circumstances. In the case of “Samiullah and another v. Laiq Zada & another”, reported as 2020 SCMR 1115 (Supreme Court of Pakistan), it has been held that the following grounds may ordinarily be taken into consideration for a plea of bail cancellation: -

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- (i) *The bail granting order was patently illegal, erroneous, factually incorrect and had resulted in miscarriage of justice;*
 - (ii) *The accused had misused the concession of bail in any manner;*
 - (iii) *The accused had tried to hamper prosecution evidence by persuading/ pressurizing prosecution witnesses.*
 - (iv) *There was likelihood of abscondment of the accused beyond the jurisdiction of court;*
 - (v) *The accused had attempted to interfere with the smooth course of investigation;*
 - (vi) *The accused misused his liberty while indulging into a similar offence; and*
 - (vii) *Some fresh facts and material had been collecting during the course of investigation establishing guilt of the accused.*

Reference may also be made to the case “Muhammad Saifullah Cheema v. Umer

Hayat and 2 others”, reported as 2022 PCr.LJ 1327 (Lahore), in which as many as five grounds, similar to the above, have been delineated.

6. Learned counsel for the petitioner argued at length that in the circumstances of the present case, ground No.(i) is attracted. He vehemently stressed on two aspects. *Firstly*, that the learned trial judge has ignored the fact as the respondents have been directly charged for attempted murder and hurts, including *Itlaf-i-Salahiyyat-i-udw* and the punishments provided for the offences u/ss. 324, 336, 337-A(iii), PPC, being hit by the prohibitory clause of section 497, Cr.P.C. *Secondly*, he emphasized that a certain FIR No.1122 dated 07.11.2022, on the basis of which bail was granted, was withdrawn by the prosecution.



7. Be that as it may, during the arguments it was admitted by learned counsel for the petitioner that challan has been submitted and the trial commenced before the learned trial Court. In the case of *Samiullah* supra, the august apex Court has held that:

“6. Needless to say that considerations for grant of bail and those for its cancellation are entirely difference. Ordinarily, the grounds which are taken into consideration for cancellation of bail are:-

- (i) *That the applicant has misused the concession of bail and is causing fear and alarm to the complainant and the prosecution witnesses;*
- (ii) *That there is likelihood of witnesses being won over and their evidence being tampered with;*
- (iii) *That there is likelihood of repetition of the commission of the crime which the accused had allegedly committed;*
- (iv) *That the accused was likely to abscond; and*
- (v) *That the order granting the bail was arbitrary, capricious and against the evidence with the prosecution.*

None of the above mentioned grounds is available to the complainant/petitioner calling for cancellation of bail granted to respondents Nos.1 and 2. It is nowhere mentioned in the petition that respondents Nos.1 and 2 have misused the bail. Once the bail has been granted on merits by the Court of competent jurisdiction, very strong and exceptional circumstances are required to cancel the same, which are not available to the petition in this case.

7.

8. *Since, learned counsel for the petitioner has not been able to point out any solid reason for cancellation of bail, therefore, this petition having no merits, is dismissed."*

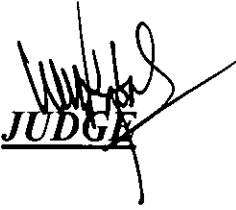
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Similarly, in the case of "Muhammad Akram v. Zahid Iqbal & others", reported in 2008 SCMR 1715 (Supreme Court of Pakistan), the august Supreme Court has observed that once trial has commenced, interference with the bail granted would be avoided by the Higher Courts. Although the cited case pertained to murder, the principle the Hon'ble Court laid down is the same that after commencement of trial, cancellation of bail would not be desirable. The Hon'ble Court has observed

that interference with the bail would help avoid making remarks that may have an impact on the merits of the case. Reliance is also placed on "Rehmatullah v. the State and another" reported as 2011 SCMR 1332 (Supreme Court of Pakistan); "Aurang Zeb v. Muhammad Yaqoob & 03 others" reported as 2022 PCr.LJ 1047 (High Court of AJ&K) and 2022 PCr.LJ 1327 (Lahore).

8. In view of the above, the instant bail cancellation application is found to be meritless, therefore, is hereby dismissed.

Announced
Dt: 23.11.2022


JUDGE

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