

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

BCA No.22-B of 2017.

Dr. Attaur Rehman

Vs

The State & another.

JUDGMENT

Date of hearing _____ 20.09.2017 _____.

Appellant-Petitioner: ***By Mr. Rasheed Khan Dhirma***
Khel, Advocate.

Respondent: ***By Khush Ameer Khattak & Haroon-***
ur-Rashid, Advocate.
State By Qudrat Ullah Khan, AAG.

ABDUL SHAKOOR, J.- The petitioner seeks cancellation of pre-arrest bail granting order dated 12.04.2017, passed by learned Additional Sessions Judge-III, Bannu, whereby ad-interim pr-arrest bail of accused/ respondent Kousar Hayat, involved in case F.I.R No. 192 dated 10.03.2017 under section 408 P.P.C, registered at Police Station Cantt, Bannu, has been confirmed.

2. Brief facts of the case are that complainant Dr. Attaur Rehman submitted a written application to the D.I.G Bannu, against the accused/ respondent that he was serving as Manager of his Patrol Pump and six months ago he criminally misappropriated the cash amount of patrol pump and left the job, while carrying the record with himself. Before arrest accused/ respondent moved ad-interim pre-arrest bail application, before the court of learned Additional Sessions Judge-III, Bannu, which was allowed and subsequently confirmed vide impugned /order dated 12.04.2017. Petitioner being aggrieved from the order dated 12.04.2017 filed the instant bail cancellation petition.

3. Learned counsel appearing on behalf of petitioner vehemently argued that learned Additional Sessions Judge was having no justification to confirm ad-interim bail of the respondent/ accused, since he did not bring on the record any element of malafide or harassment on the part of petitioner for lodging the case F.I.R and in absence of malafide or harassment there was no valid reason or justification before the learned Additional Sessions Judge to confirm ad-interim bail. During

the course of arguments learned counsel for petitioner drew attention of this court to F.I.R No. 180 lodged by accused/respondent against the present petitioner under section 324/427 P.P.C Police Station Karak, in which one Ism Gul son of Gulzada who was cited as witness to the alleged occurrence during the investigation has recorded his statement under section 164 Cr.PC, before the learned Judicial Magistrate, Takht-e-Nasrati, Karak, wherein he termed the contents of said F.I.R as false. He contended the launching of said F.I.R amounts to a threat to petitioner/ complainant for withdrawing of his case F.I.R. The same is sheer misuse of the concession of bail extended in his favour by the learned Additional Sessions Judge, Karak.

4. Conversely, the learned counsel appearing for respondent argued that although respondent was named in the F.I.R, but there is delay of more than six months in lodging the same, which by itself speaks the malafide of the petitioner, thus learned Additional Sessions Judge rightly confirmed the ad-interim bail. He further argued that F.I.R which has been referred to by the learned counsel for the petitioner cannot be

termed as threat to the petitioner for withdrawing his case. More so, when alleged eyewitness of the F.I.R has termed the contents of said F.I.R in his statement recorded under section 164 Cr.PC, as false, then the very claim of present petitioner that it was misuse of the concession of bail does not carry any weight to be taken into consideration.

5. I have considered the submissions of learned counsel for the parties and also carefully gone through the record available on file.

6. Perusal of the material available on the record reveals that considerable delay of six months has made in reporting the matter to the police of alleged occurrence for which no plausible explanation has been furnished by the complainant. Admittedly the accused/ respondent was a manager at the Petrol Pump of the complainant then the possibility of malafide in lodging the instant F.I.R cannot be ruled out on the part of complainant as he had left his employment. Further except statement of complainant nothing is available on record which may prima facie connect the accused/ respondent with the commission of offence alleged to

be committed, which does not fall within the prohibitory clause of section 497 Cr.PC.

7. It is settled principle of law that once discretion has been exercised by the court of competent jurisdiction for grant of bail or confirmation of ad-interim bail, then the same cannot be reversed or recalled until or unless the same is either perverse or illegal. For cancellation of bail, strong and cogent reasons are required to be furnished, which are lacking in the instant case.

8. In cases, where ad-interim bail is confirmed then the ground which are essential for cancellation of bail are as:

- (i) Exceptionally strong grounds such as abuse/ misuse of concession of bail exist;
- (ii) A Court cannot cancel the bail even when the offence is punishable with death or imprisonment for life, and even if grant of bail is prohibited under section 497(10) Cr.PC the discretion left in the Court under section 497 (5) Cr.PC.
- (iii) Grounds for cancellation of bail are pari material with the principles which apply to setting aside the orders of acquittal.
- (iv) Bail can be recalled where the person on bail repeats the offence;
- (v) Hampers the investigation;
- (vi) Makes some efforts to tamper with the evidence;
- (vii) Commits some act of violence against the police;'

- (viii) Prosecutes the witnesses;
- (ix) Manages to flee away from the country or beyond the control of sureties;
- (x) Order of bail has been obtained through misrepresentation or suppression of facts.

9. In light of above points, now it is well settled proposition of law that grounds and principle for grant of bail are totally different from the ground and principle for cancellation of bail already granted to an accused. The only point which required to be considered in the instant cancellation petition is whether accused/ complainant has misused the concession of bail or his remaining at large would be a serious threat to the evidence brought on record against him. This means very strong and exceptional grounds are to be required for cancellation of bail. If we see the case of complainant in this perspective, I do not find any material before, which may warrant justification for the interference in the discretion exercised by the lower Court. The only point which urged for cancellation of bail is misuse of concession of same in terms of lodging of afore said F.I.R against the present petitioner. The same has already been termed as false by the eye witness cited

therein, thus, the same act on the part of accused/ respondent by no way can be termed as misuse of concession of bail.

10. This Court has already observed, although the petitioner was named as accused in F.I.R, but the delay of more than six months in lodging the report has not been explained and no valid reason has been advanced, which may appeal to prudent mind that there was any justification for such long delay in lodging the report.

11. The principle laid down by the three members bench of the apex Court in the Sarwar Sultan's case (PLD 1994 SC 133) is on all four of the case of respondent, relevant portion of the same is reproduced herein.

"9. From legal angle, it can be said that there is material difference between bail after arrest as contemplated under section 497, Cr.P.C. and bail before arrest under section 498, Cr.P.C. In non-bailable offence, an accused is not to be released on bail by the Court, if there appear reasonable grounds for believing that he has been guilty of offence punishable with death or imprisonment for life or ten years. Of course it is also provided that bail can be granted on exceptional grounds of age, infirmity and sex and also if there are sufficient grounds for further

inquiry and also on the ground of statutory delay. As against that under section 498, Cr.P.C. High Court or Court of Session can grant bail at any stage and this provision is normally used for bail before arrest. In this provision amendment has been made and by Code of Criminal Procedure (Amendment) Act XII of 1976 section 498-A is inserted imposing restriction on grant of bail before arrest to a person, who does not surrender before the Court or against whom no case is registered. Grant of pre-arrest bail means that accused is exempted from joining the investigation and by not joining the investigation, prosecution case may suffer for want of recovery of incriminating articles and other material, which may be necessary to connect him with commission of alleged crime. The Court has to keep in view all these factors in order to maintain balance between both parties and would be cautious not to give undue advantage to one party over the other at the stage of investigation. Of course there is no cavil about the proposition that the Court has power to grant bail before arrest in an appropriate case, if the Court is satisfied that is a fit case for grant of such relief within the limits of law also it stated above".

12. Apex Court in the case of **Rana Muhammad v. Muhammad Rafique, (PLD 2009 SC 427)** which is a Judgment

by two members' Bench summarized law in regard to ad-interim bail as under:--

(a) Grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) Pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e., unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to B disagree and dishonour him;

(e) such a petitioner should further

establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.”

14. The above case-law indicates that considerations for grant of pre-arrest bail are not at all different, as far as merits of the case are concerned, from the considerations for grant of post arrest bail. The only difference, which has been highlighted in certain Judgments, is that there must be additional basis of humiliation, harassment, mala fides, intention to disgrace and dishonour. This particular view has to be read in juxtaposition with view that if a person is otherwise entitled to bail, no useful purpose shall be served by putting such person firstly behind bars and then allowing him bail. In Sarwar Sultan's case (supra) it has been held that the Court has to keep a balance but it has been then observed that if a fit case

for grant of bail is made out, bail before arrest should be allowed in appropriate cases.

15. For what has been discussed above, this bail cancellation petition being devoid of any merits, stands dismissed.

Announced.
20.09.2017

(ABDUL SHAKOOR)
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