

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

CR. M BCA No.2748-P/2018
Adnan Khan Vs. The State & another

Date of hearing 02.12.2019

Mr. Azhar Yousaf Khan, Advocate, for petitioner.

Mr. Noeen-ud-Din Hamayun, AAG, for the State.

Mr. Noman-ud-Haq Kakkalhel, Advocate for respondent No.2.

JUDGMENT

Ahmad Ali, J. Aggrieved of the grant of pre-arrest bail to the respondent No.1 vide order dated 16.08.2017 passed by the learned Additional Sessions Judge-II Nowshera, the petitioner filed present petition under Section 497(5) Cr.P.C.

2. A brief background of the present B.C.A. is that on the report of petitioner a case vide FIR No.1287 dated 28.12.2016 u/s 489-F PPC was registered at Police Station Nowshera Kalan. The respondent No.2/accused filed application for the grant of pre-arrest bail, accordingly ad-interim pre-arrest bail was granted to

respondent/accused vide order dated 05.08.2017 subject to furnishing bail bonds in the sum of Rs.70,000/-. Thereafter, the petitioner/complainant patched-up the matter with the respondent/accused and submitted the compromise deed before the learned court ASJ-II Nowshera as Ex.PA. Statement of complainant and accused was recorded wherein they endorsed the terms & conditions of compromise deed, and accordingly, the ad-interim pre-arrest bail granted to respondent No.2/accused stood confirmed vide order dated 16.08.2017.

3. After confirmation of pre-arrest bail, the challan submitted for the trial of accused but he evaded to appear before the learned trial court, consequently, proceedings u/s 512 Cr.PC were initiated and finally perpetual warrant of arrest was issued on 15.12.2017. On 19.06.2018 the respondent/ accused was arrested in execution of the perpetual warrant of arrest. The petitioner/complainant filed petition for cancellation of bail before the learned Addl. Sessions Judge-II Nowshera which was dismissed vide order dated 28.06.2018. Meanwhile the respondent/accused, who was arrested in the execution of perpetual warrant of arrest, submitted



bail petition before the learned Judicial Magistrate-I Nowshera. The said bail petition, in view of the already granted pre-arrest bail, was accepted and respondent/accused was directed to furnish fresh bail bonds worth Rs.200,000/- with two sureties. Now the petitioner/complainant filed present petition for the cancellation of pre-arrest bail on the sole ground of condition of cancellation of bail as stipulated in the compromise deed Ex.PA.


4. Learned counsel for the petitioner/complainant argued that the compromise was affected between parties with certain conditions. It was stipulated in the compromise deed that in case the accused failed to honour the compromise, complainant will have the right to apply for the cancellation of his bail. The accused had not only reneged the conditions of compromise but after the grant of bail he went into hiding and thereby betrayed the confidence of court. Hence, his bail was liable to be recalled.

5. Learned counsel for the respondent/accused argued that the terms of conditional bail is alien to the law relating to criminal administration of justice. The accused

had neither tempered the record nor repeated the offence, therefore, bail cancellation petitioner may be dismissed.

6. I have given my deep thought to the arguments of learned counsel for the parties and perused the record with their able assistance.

7. After scrutinizing the record of case, it is undisputed fact that the ad-interim pre-arrest bail of the respondent/accused was confirmed on the basis of compromise. There is no mention of any condition in the impugned order which call for the cancellation of bail. Besides, a thorough perusal of the compromise deed Ex.PA reveals that no time limit for the fulfilment of promise was fixed, therefore, it cannot be held that the accused reneged his promise. Nothing is there to suggest the misuse of the concession of bail or tampering with the evidence and investigation process.



8. The stipulation of the cancellation of bail in the compromise deed, produced as Ex.PA at BBA stage, and the consent of parties cannot override the law. Provisions of Section 497(5) Cr.P.C. cannot be made subservient to the consent of complainant. Prerogative of

the Court to cancel the bail cannot be shifted to complainant on the basis of mutual agreement between parties. Grant of bail on the basis of condition cannot be sustained as principles for the grant of bail and cancellation thereof are altogether different. in this regard I place reliance on the view of this Court rendered in the case of "Haji Hukmat Khan Vs. The State and another" (2012 PCr.LJ 1018), wherein it was held:

"Moreover, it cannot be left to the sweet will, discretion and prerogative of the complainant that he may at a certain point of time make a request before a Court of law for his no objection over the release of an accused on bail and still at another time of his own choice may make a request to recall the bail order. The process of law cannot be made subservient to the will of an individual."

9. I am also fortified by the dictum laid down by the Hon'ble Apex Court in the case of "Muhammad Tanveer VS. The State and another" (PLD 2017 Supreme Court 733), wherein it was held:

"11. It is settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in particular category of offences without placing any prohibition on such discretion then, the Court shall not import to the

provision of law, reasons or factors alien thereto and not specifically mentioned in the Statute.

12. - - -

13. Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts.”

10. For what has been discussed above, learned counsel for the petitioner failed to demonstrate that the bail granting order is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice. No reasonable ground exists for the cancellation of bail granted to the respondent No.2. Consequently, the present application is dismissed

Announced.
02.12.2019.



JUDGE