

JUDGMENT SHEET
PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
(Judicial Department)

Cr.M.BCA. No.262-A/2020.

Gulbaz
Vs.
The state and another

JUDGMENT

Date of hearing: **20.04.2020.**

Petitioner (Gulbaz) by: Mr. Abdul Saboor Khan,
Advocate.

State by: Sardar Muhammad Asif, AAG.

Complainant by: Mr. Shad Muhammad Khan,
Advocate.

AHMAD ALI, J.- Through the instant petition, the complainant has prayed for cancellation of bail granted to the respondent No. 2 (Siraj) by the learned Sessions Judge, Kohistan Lower, vide orders dated 12.03.2019 in case FIR No. 247 dated 18.12.2019 under Section 302/311/148/149 PPC of Police Station Dobair, District Kohistan Lower.

2. Complainant Gulbaz, accompanying the dead body of his paternal cousin Yousaf Khan, reported the matter to the local police that he along with his cousin were returning home after taking groceries and at about 01:00 PM, when they reached

village Sair Barkalay Ranwalia, accused Siraj S/o Nosher, Ajdar Khan S/o Doraj, Doraj S/o Nosher, Hassan S/o Seraj and Sadbar S/o Doraj were present in the way, who were duly armed. On seeing the complainant and deceased, Seraj and Ajdar Khan started firing on Yousaf Khan who sustained injuries and died on the spot. Rest of the accused were present to aid accused Seraj and Ajdar Khan. After the occurrence, accused decamped towards their houses and meanwhile from the house of accused Doraj, firing was heard and on query complainant came to know that accused Doraj has committed murder of his wife Mst. Zahib. The motive for the occurrence was the suspicion of the accused that both the deceased had illicit relations. On the basis of report of the complainant, FIR was lodged against the accused.

3. Learned counsel for the petitioner argued that the respondent-accused along with his co-accused were directly charged for effective firing at the deceased; that it was a broad daylight occurrence, the presence of the eyewitness/complainant has been established, medical evidence duly supports the prosecution version, empties were

recovered from the spot and the grant of bail in such circumstances was unusual; that the plea of alibi raised by the accused/respondent required further probe and on the sole plea, the bail could not be granted. He argued that the order of the learned Sessions Judge is not according to the record. He argued that in each and every case, there is a room for further inquiry, but it does not mean that it will entitle the accused for the extraordinary concession of bail in offences punishable with death or imprisonment for life.

4. Learned State Counsel adopted the arguments of the learned counsel for complainant.

5. Conversely, learned counsel for the accused-respondent, argued that the FIR was not in consonance with the site plan prepared at the instance of the complainant. The record available on file apparently makes the case to fall within the ambit of further inquiry and that the accused/respondent being a cancer patient was rightly granted bail as he succeeded to establish that he was not available on spot at the time of occurrence. He argued that considerations for cancellation of bail are different from the



consideration for grant of bail. He argued that there must be strong and exceptional circumstances that could warrant interference in bail granting order. He placed reliance on the case of **Muzaffar Iqbal Vs. Muhammad Imran Aziz and others (2004 SCMR 231)**.

6. Arguments heard and record perused with the able assistance of learned counsel for the parties.

7. While considering the bail application, the Court has only to see that whether there are reasonable grounds to believe that the accused has committed the offence punishable with death or imprisonment for life. The Court is not required to conduct a preliminary inquiry/trial but has only to make tentative assessment. The apex Court of the country has set the guidelines for grant or refusal of a bail in the case of "**Tariq Bashir and 5 others Vs. The State (PLD 1995 Supreme Court 34)**", wherein it has been held that:-

"For arriving at the conclusion as to whether or not there are reasonable grounds to believe that the accused is guilty of offence punishable with death, imprisonment for life or with ten years' imprisonment, the Court will not conduct a preliminary trial/inquiry but will only make

tentative assessment, i.e. will look at the material collected by the police for and against the accused and be prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt. Deeper appreciation of the evidence and circumstances appearing in the case is neither desirable nor permissible at bail stage. So, the Court will not minutely examine the merits of the case or plea of defence at that stage”.

8. Deeper appreciation of evidence at bail stage is not permissible, however, while allowing bail to the accused, the learned Sessions Judge has considered those factors, which are usually thrashed after recording prosecution evidence and the same is thus not sustainable. The accused were charged with an offence punishable with death or imprisonment for life.

9. Perusal of the bail granting order would transpire that the learned Sessions Judge, while allowing bail to the accused/respondent has considered his plea of alibi. The record shows that the accused/respondent raised his plea through application dated 26.12.2019 wherein he claimed that on the relevant day, he was present in his office. His application was sent to the department for inquiry and report. However, the investigating

officer of the case has not confirmed his plea of alibi. The respondent/accused is directly charged for the murder of deceased Yousaf Khan by making indiscriminate firing on him. The occurrence was witnessed by the eyewitnesses and the medical reports of the deceased support prosecution version.

10. There is no cavil with the proposition that when once bail is granted, strong and exceptional grounds are needed to get it cancelled, however, in this case, this Court finds that the incident took place on 18.12.2019, at 01:00 p.m, and the matter was reported to the local police at 1500 hours. There is no noticeable delay in lodging of the FIR as it is yet to be established that whether the place of occurrence was easily accessible and that there was transport available and that the FIR was lodged after deliberation etc. The respondent was duly nominated in the FIR, with specific role of firing at the deceased. In the case of ***"Mst. Noor Habib Vs. Saleem Raza and others (2009 SCMR 786)"*** it was held by the apex Court that:-

"Considering the case of respondents for grant of bail on the above touchstone, we are of the view that learned High Court

was not at all justified in extending benefit of grant of bail to Saleem Raza and Akhtar Islam respondent. Both the respondents have been specifically named in the FIR for firing effectively along with others, culminating in the murders of two young brothers, aged 35 years and 32 years respectively. Fifty-two crime empties have been recovered from the place of occurrence and large number of fire-arm injuries are found on the persons of the deceased. In such circumstances when they all had been prima-facie implicated, there was no justification for the grant of bail to any of them. Learned counsel for the petitioner rightly contended that whatever pleas they desire to raise in their defence, could be raised at the trial stage."



11. In the instant case too, the respondent stands directly charged for making effective firing at the deceased, recoveries have been effected from the place of occurrence and the medical report of the deceased shows multiple firearm injuries on his

body. In the case of "***Ghulam Qammer Shah Vs. Mukhtiar Hussain (PLD 2015 SC 66)***", the august Supreme Court of Pakistan, recalled the bail granted to the accused, by holding that:-

"On the merits of the case, we have notices that respondent No. 1 was attributed a specific firearm injury on the neck of Zahid Hussain PW who has so far stood by his allegation against the respondent in that respect and he is prima-facie supported by the medical evidence. In these circumstances, it could not be said that the case against respondent No. 1 called for further inquiry into his guilt for the purpose of releasing him on post-arrest bail."



Reference can also be made to the case of "***Mst. Jewan Mai Vs. The State (PLD 2015 SC 242)*** and ***Abdul Ghaffar Vs. Sakhi Sultan and 3 others (1987 SCMR 1556)***".

12. The petitioner stands directly charged for an offence punishable with death or imprisonment for life and falls within the prohibitory limb of Section 497 Cr.P.C. and in such

like cases, the grant of bail on the grounds which are yet to be established during trial, is uncalled for. The order of the learned Sessions Judge, Kohistan Lower, on the face of it, is perverse and the discretion exercised in allowing bail is arbitrary, therefore, the bail granting order is not sustainable in the eye of law.

12. Needles to mention that the observations recorded herein above, are purely tentative in nature for disposal of petitioner for cancellation of bail and shall, in no way, prejudice the learned trial Court.

13. For the afore-stated reasons, the petition in hand is allowed, bail granting order dated 12.03.2019, passed by the learned Sessions Judge, Kohistan Lower is set aside, consequently bail granted to the respondent-accused is hereby cancelled. He is present in Court, taken into custody and sent to Judicial Lockup.

14. Above are reasons of my short order of even date.

Announced.
20.04.2020



JUDGE

PESHWAR HIGH COURT ABBOTTABAD BENCH

No. 74/ Dated 20/4.2020.

To:

The Superintendant,
District Jail, Lower Kohistan.

Subject:

Cr M/BCA No. 262-A/2020.

Gul Baz, son of Shah-Duran, resident of Ranolia, Tehsil Pattan,
District Kohistan Lower.

..... Petitioner/Complainant.

VERSUS

1. The State.
2. Siraj, son of Nosher, (Nosherwan) resident of Ranolia, Tehsil Pattan, District Kohistan Lower.

.....

Accused/Respondents.


**(APPLICATION FOR CANCELLATION OF BAIL UNDER
SECTIONS 495(5) OF THE CODE OF CRIMINAL PROCEDURE,
1898**

Memo:

WHEREAS, the subject Bail Cancellation application has been filed before this Honourable Court on 31.03.2020, for cancellation of bail of accused respondent No 2, namely, Siraj, son of Nosher, resident of Ranolia, Tehsil Pattan District Kohistan Lower.

AND WHEREAS, it was fixed before the Honourable Court SB on 20.04.2020, and the Honourable Court SB has ordered that the bail cancellation application is allowed and bail granted to the accused/respondent, namely, Siraj, son of Nosher , (Nosherwan) charged in case FIR No 247 dated 18.12.2019 U/S 302/311/148/149 PPC, Police Station Dubair District Kohistan Lower, vide order dated 12.03.2019 passed by learned District and Sessions Judge, Kohistan Lower. is hereby recalled.

Accused/respondent, namely, Siraj son of Nosher, (Nosherwan) resident of Ranolia, Tehsil Pattan, District Kohistan Lower is present in Court, taken into custody and is being remanded to judicial lock-up and shall be produced before trial court/Illaqa Judicial Magistrate on 27.04.2020.


Additional Registrar
Peshawar High Court,
Abbottabad Bench

16/4
20/20