

*Judgment Sheet*

PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

*JUDICIAL DEPARTMENT*

**Cr.M No.863 -A of 2016**

*JUDGMENT*

*Date of hearing.....06/07/2017.....*

*Petitioner...(Gul Muhammad) by Mr. Fazal-i-Haq Abbasi,  
Advocate.....*

*Respondent...(The State etc)... by M/S Yasir Zahoor Abbasi, Assistant AG and  
Qazi Muhammad Arshad Advocate.....*

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**SYED MUHAMMAD ATTIQUE SHAH, J:-**

Petitioner/complainant, Gul Muhammad, seeks  
cancellation of bail granted to  
accused/respondents, Amanullah, Faiz  
Muhammad, Masoom Khan, Abdul Jabbar,  
Sajid, Awais and Arshullah by the learned  
Sessions Judge, Battagram, vide impugned  
order dated 29.10.2016, in case F.I.R No.220  
dated 14.09.2016 under sections 302/337-  
F(v)/337-D/337-A(ii)/147/149 PPC Police  
Station Chanjal, District Battagram.

2. The brief facts of the case against the accused/respondents lodged on the report of complainant/petitioner are that they alongwith their co-accused have attacked the complainant party and got them injured and later on one of the injured namely Naseeb Khan succumbed to his injuries. Accused/respondent, Muhammad Awais has also charged the complainant party in cross case registered vide FIR No.225 dated 14.09.2016. After arrest, both the parties applied to the learned lower Court below for grant of bail and their applications were allowed.

3. Learned counsel for the petitioner argued that the bail granting order of the learned lower Court below is illegal, perverse and arbitrary and prayed for cancellation of bail granted to the accused/respondent by accepting the present Bail Cancellation Application.

4. On the other hand, learned counsel for the accused/respondents has controverted the arguments of the learned counsel for the

petitioner and argued that no illegality has been committed by the learned lower Court below in extending concession of bail to the accused/respondents. Learned counsel for the accused/respondents prayed for dismissal of the present bail cancellation application filed by the petitioner.

5. Arguments of the learned counsel for the parties and learned AAG heard and record of the case perused with their able assistance.

6. Perusal of record of the case reveals that the complainant has categorically stated in the FIR that the deceased Naseeb Khan was injured by accused/respondents Sajid and Abdul Jabbar with sharp edged weapon. However, it transpired from the medico-legal report of injured Naseeb Khan that the weapon used was blunt in nature. Moreover, the injured eyewitnesses, Rasool Khan and Muhammad Iqbal in their statements recorded under sections 161 Cr.P.C, after about thirteen

days of occurrence on 27.09.2016, for the first time introduced presence of axes with accused Abdul Jabbar, Sajid, Faiz Muhammad and Amanullah but the medico-legal report of the injured Naseeb Khan is not supporting the version of the complainant in the FIR and is also contradictory to the statement of injured PW Rasool Khan. In this view of the matter, the learned lower Court below has neither committed any illegality by allowing bail to the present accused/respondents nor the impugned order is arbitrary and perverse. Learned counsel for the petitioner has not taken any other ground for cancellation of the bail except the one that the impugned order is illegal, perverse and arbitrary. In view of the facts discussed above, the case is not only of cross version but in the present circumstances, it has become a case of further inquiry in accordance with the mandate of section 497(2) CR.P.C.

7. It is also well settled principle of law that the considerations for the cancellation

of bail are altogether different from the considerations for the grant of bail. In this regard, this Court seeks guidance from **Muzaffar Iqbal's case** (2004 SCMR 231), wherein, it has been held that:

*“It is well-settled by now that “considerations for the cancellation of bail are different from the considerations for the grant of bail. Section 497(1), Cr.P.C. prohibits the grant of bail or offences punishable with death or imprisonment of 10 years or over. Section 497(5), Cr.P.C does not command the Court to cancel the bail even when the offence is punishable with death or imprisonment for life, and even if the grant of bail is prohibited under section 497(1), Cr.P.C the discretion is left in the Court under section 497(5), Cr.P.C which is pari materia with the principles which apply to the setting aside of the orders of acquittal.(Mian Dad v. The State 1992 SCMR 1289).”*

Reliance is also placed on case titled **Habibur-Rehman etc Vs. the State etc** (2017 SCMR 274).

8. Keeping in view the above facts and circumstances, this Court is of the considered view that the bail granting order is based on proper appreciation of the material available on record of the case and there exists no ground to cancel the bail granted to the

accused/respondents. Therefore, the instant bail cancellation petition being bereft of merits is dismissed.

**Announced.**  
**Dt.06.07.2017.**

**J U D G E**

/\*M.S.Awan\*/