

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of order or proceeding	Order or other proceedings with signatures of Judge (s).
(1)	(2)
16.08.2017	<p><u>Cr. Misc: /BCA No.52-B of 2017</u></p> <p><u>Present:</u></p> <p><u>Inamullah Khan Marwat, Advocate for petitioner.</u></p> <p>*****</p> <p><u>IJAZ ANWAR, J.---</u> Muhammad Ayaz, petitioner, seeks cancellation of bail of respondent, Muhammad Sajjad involved in case FIR No. 315 dated 11.07.2017 under sections 392/34 P.P.C, Police Station Ghazni Khel, Lakki Marwat, granted vide order dated 15.07.2017 by the learned Judicial Magistrate-VIII, Lakki Marwat.</p> <p>2. Pithy facts of the case as per F.I.R mentioned above are that complainant Muhammad Ayaz, reported the matter to the local police on 11.07.2017 at 08.30 hours, to the effect that on 17.06.2017 when he, riding on motorcycle model 2013 Honda Delex, was going towards the house of Jehangir Khan situated at Saeed Khel and at about</p>

21.20 hours, reached near the bridge, meanwhile two persons armed with Kalashnikovs appeared, aimed their weapons and forcibly snatched key of motorcycle, during this another person riding on motorcycle standing near the two persons ignited his motorcycle and in its light, the complainant identified one Sajjad son of Muhammad Zaman r/o Kheru Khel. The accused fled away after snatching the motorcycle. The complainant also alleged that he can identify other persons, if confronted. Hence, the F.I.R.

3. The accused/ respondent after his arrest moved bail application before the learned Judicial Magistrate-VII, Lakki Marwat, who vide order dated 15.07.2017 accepted the same. The petitioner has impugned bail granting order dated 15.07.2017 before the Court of learned Sessions Judge, Lakki Marwat, but in vain. Hence, this bail cancellation petition.

4. Arguments heard in motion and

available record perused.

5. Learned counsel for the petitioner argued that accused / respondent is directly charged for an offence that comes within the prohibitory clause of section 497 Cr.PC. The offence committed is against the society at large also, however, the learned Additional Sessions Judge has not considered this aspect of the case and allowed bail to the accused/ respondent. He prayed for cancellation of bail.

6. The contents of FIR reveals that the time of occurrence is 21:20 hours, dated 17.06.2017, while the petitioner reported the matter to the local police on 11.07.2017 at 08:30 hours. There is unexplained delay in lodging the F.I.R. Similarly if he had identified the accused on the crucial time then what preventing him for waiting for about 24/25 days.

7. Learned counsel referred to an FIR No. 316 dated 11.07.2017 under section 324/ 353/ 427/ 216/ 148/ 149 PPC, 15 AA, wherein accused

Sajjad was shown arrested in this case and then that mishap occurred. The story so put forward in the FIR No.316 shall have its own facts and circumstances to be dealt with separately, but under no circumstances can be considered as an explanation for the delay in lodging FIR in the present case.

8. It is pertinent to mention here that it is by now well settled that consideration for cancellation of bail are different from the consideration for the grant of bail. The bail can be cancelled if the order on the face of it is perverse and has been passed in violation of the principles for grant of bail or it is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of Justice. Reliance is placed on 2010 SCMR 580; 2006 SCMR 1265 and 2007 SCMR 482. While considering the bail granting order, on the touchstone of the judgements of the apex court, this court found that the orders were neither perverse

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nor factually incorrect.

9. On granting bail to the accused there is no allegation that he has in any manner misused the concession of bail. Similarly the offence alleged to have been committed does not come within the prohibitory clause of section 497 Cr.PC, hence the bail granting orders needs no interference.

10. It is reiterated that the superior courts have set some principles which the courts have to consider while granting or refusing bail, those facts are:

"(a) Whether there is or is not a reasonable ground for believing that the accused has committed the offence with which he is charged?"

(b) Whether the case requires further enquiry into the guilt of commission of non-bailable offence within the scope of section 497(2), Cr.P.C.?"

(c) Whether the accused is minor, woman, sick or infirm person?"

(d) The nature and gravity of the charge.

(e) The severity or degree of the punishment which might follow in the circumstances of the case on conviction.

(f) The danger of the accused absconding if he is released on bail.

(g) The danger of witnesses being tampered with.

(h) the danger of the alleged offence being continued or repeated.

(i) The character, the means and standing of the accused.

(j) An opportunity to the accused to prepare his defence.

(k) The accused has already been in jail for a considerable period and the trial is not likely to conclude in near future at least.

(l) Bail should never be withheld as a punishment."

11. Needless to mention that the observations so recorded above by this Court are tentative in nature and shall have no bearing on the merit of the case.

12. Keeping in view the above, this petition for cancellation of bail has no merit is the dismissed.

Announced.
16.08.2017
Azam/P.S.



JUDGE

