

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT (Judicial Department)

Cr.M.B.C.A. No. 92-M of 2016.

JUDGMENT

Date of hearing: **18.01.2017.**

Petitioner: - (Amir Baz Khan) by Syed Abdul Haq, Advocate.

Respondents: - (the State & 1 another) by Barrister Asad Hameed-ur-Rahman, State counsel and Mr. Asad Ullah, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- By the order dated 02.8.2016 accused/respondent Rashid Ahmad, on his acceptance of B.A. No. 176/4 of 2016 was granted bail by the learned Additional Sessions Judge/Izafi Zila Qazi Dir Lower Camp Court at Timergara.

2. Dissatisfied, complainant Amir Baz Khan has preferred cancellation petition within the meaning of section 497 (5) Cr. P.C for recalling of the order of learned Additional Sessions Judge/Izafi Zila Qazi Timergara.

3. Amir Baz Khan the complainant preferred the complaint to the Station House Officer of P.S. Talash District Dir Lower stating therein that he has purchased certain piece of land

through unregistered sale deed No. 882 dated 02.10.2014 for an amount of Rs. 51,000,00/- Later on another transaction vide another unregistered sale deed No. 883 of even date was also executed for an amount of Rs. 66,000,00/- for some other land as sale consideration in favour of the complainant. The accused/respondent Rashid Ahmad posed himself to be lawful owner of the suit property. By the moment the possession was to be obtained, another person by the name of Fazal Rahman alias Fateh Gul resident of Timergara District Dir used to come forward and interfere in his possession. The allegations against the accused/respondent are that each time in every sale he obtained the amount from petitioner in lieu of purchase of lands through fraud.

4. Having heard learned counsel for the petitioner and learned counsel for the accused/respondent/learned State counsel, record gone through with their valuable assistance.

5. Learned counsel for the petitioner mainly relied upon *2007 YLR 249 (Lahore)* “*Waseem Zia vs the State and another*”, *2012 Pr. L. J 1350 (Lahore)* “*M. Iqbal Butt vs the State*

and 3 others” and 2005 MLD 432 (Lahore) “Messer Pakistan State Oil Company Ltd through Divisional Manager, Retail PSO vs Shaukat Maqbool and another”. In view of the wisdom contained in these judgments, it has emphasized upon that when the prosecution possessed sufficient material to prima facie connect accused with the commission of alleged offence and an offence fell under the prohibitory clause of section 497 Cr.P.C concession of bail granted to an accused can be recalled. Inversely learned counsel for the accused/respondent placed reliance on *2008 P Cr. L J 1565 (Lahore) “Aurangzeb vs Shakeel Ahmad and another”, 2006 P Cr. L J 252 (Peshawar) “Haji Khan Sherin and another vs Siraj and another”, 2004 P Cr. L. J 1447 (Karachi) “Muhammad Boota vs Abdul Hamid and 3 others”, 2010 SCMR 580 “The State/Anti-Narcotic through Director-General vs Rafiq Ahmad Channa”, 2004 SCMR 231 “ Muzaffar Iqbal vs Muhammad Imran Aziz and others”, 1991 SCMR 322 “ the State vs Malik Mukhtar Ahmad Awan”, 2009 SCMR 299 “ Mitho Pitafi vs the State” and 2008 YLR 1070 (Peshawar) “ Shah Diyaz Khan vs the State”*. In the light of these

authorities since the principles for the grant of bail and those for cancellation of bail are quite different therefore, it was prayed for dismissal of the petition.

6. After the complaint was registered, the police officials of P.S. Talash thought it best that sections 419/420/468/471/34 PPC are applicable in the given circumstances of the complaint/petition. Out of these, section 420 PPC is bailable whereas sections 468 & 471 PPC being non-cognizable offences, police cannot arrest an accused without express warrant from the Court of Magistrate of the 1st Class. There is only one section i.e. 419 PPC whereby the punishment has been provided up to 7 years with fine or both. If at all the involvement of the accused/respondent for the purpose of bail cancellation is looked into it can only be construed under section 419 PPC only.

7. It is a fact that the principles for the grant of bail and those for cancellation of bail are quite different. On the basis of evidence so collected, the prosecution shall find exceptional grounds whenever a competent Court having jurisdiction in the matter has granted bail which

order shall be declared patently illegal, erroneous and being factually incorrect which might have resulted into miscarriage of justice. The relevant portion of section 497 (5) is reproduced below:-

(1).....

(2).....

(3).....

(4).....

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

8. There requires strong reasons for cancellation of an order which shall also be held perverse and disregard to well settled principles regulating the grant of bail or for reason that the material/evidence was available on the file which cannot rightly connect the accused with the commission of the crime punishment of which falls within the prohibitory clause of section 497 Cr.P.C, provided further that there shall be no reason to fall the role of the petitioner within the scope of further inquiry.

9. The matter seems to be of civil nature and it is yet to know whether the sale deeds have been executed by the accused/respondent and for reasons that

it requires evidence to be recorded to hold that the sale deeds to be either false/bogus or the accused/respondent has acted in the capacity of cheating by personation.

10. Regard to abscondence of the accused/respondent being fugitive from justice proceedings under section 512 Cr.P. although were initiated but up till now he has not been declared proclaimed offender. Even otherwise bail could be granted if accused had good case for bail on merits and mere fugitive from justice for quite some time would not come in the way of granting him bail. In this case the impugned order of the learned Additional Sessions Judge/Izafi Zila Qazi Timergara is not open to any exception as it is neither fanciful nor otherwise illegal in the given set of circumstances of this case, thereby held quite legally justified. There is no scope for cancellation of the bail granted to the accused/respondent by the said learned competent Court, hence this bail cancellation petition being shorn of merits stands dismissed.

Announced
Dt: 18.01.2017

JUDGE