

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.231 OF 2020

(Against the order of the Peshawar High Court, Peshawar dated 14.02.2020 passed in Cr. MBCA No.45-M/2019 and Cr. MBCA No.46-M/2019)

Sami Ullah and another ... **Petitioners**

Versus

Laiq Zada and another ... **Respondents**

For the Petitioner : Mr. Abdul Latif Afridi, ASC
Barrister Sarwar, Advocate

For the Complainant Mr. Muhammad Saeed Khan ASC
Syed Rafaqat Hussain Shah AOR

For the State : Zia Ullah ASI

Date of Hearing : 08.05.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Petitioners have sought leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the order impugned passed by learned Peshawar High Court, Mingora Bench (Dar-ul-Qabza), Swat dated 14.02.2020 in Cr.MBCA No.45/46-M/2019 with the prayer to set-aside the order impugned in the interest of safe administration of criminal justice.

2. The petitioners were booked in case bearing FIR No.62/2019 dated 08.06.2019 under Section 316/452/337-A(ii), 337 F(iv)/34 PPC registered with Police Station Sheringal, District Dir Upper.

As per allegation contained in the crime report, it is alleged that the complainant was present alongwith other women-folk when the petitioners duly armed with sticks and stones entered in the house of petitioner and caused injuries to Mst. Shabina Bibi, Mst. Prona Bibi, Enam and Khan Zada which landed on the different parts of the injured PWs, however Khan Zada succumbed to the injuries at a belated stage. The motive behind the occurrence was dispute over the agricultural land. The petitioners were taken into custody in pursuance of the aforesaid crime report. The petitioners applied for their post arrest bail which was allowed by learned Addl: Sessions Judge-II, Dir Upper vide order dated 01.07.2019. The complainant being aggrieved by the order of the learned Addl: Sessions Judge-II, filed two petitions (Cr.MBCA No.45-M/Cr. MBCA No.46-M/2019) for cancellation of bail, both these petitions were decided vide consolidated order dated 14.02.2020. Hence, the instant petition.

3. At the very outset, it has been argued by the learned counsel for the petitioners that in fact, the learned High Court has grossly erred in recalling the order of learned trial court and the same has been passed without any legal justification. Contends that the petitioners were enjoying the concession of bail since seven months, however, this aspect was totally ignored while passing the order. Further contends that it is established principle of law that the considerations for grant of bail and cancellation whereof are entirely on different footings. It has been argued that considerations laid down to entertain such like petitions enunciated by the superior courts escaped notice by the learned High Court while passing the order. It is vehemently conceded that

no doubt learned High Court can adjudicate and recall the order if the same is prima facie illegal, perverse, fanciful and passed while ignoring the actual record, hence the order impugned is altogether in defiance of principles laid down to pass such orders. It is further argued that there is nothing on the record which suggests that the order passed by learned trial court was falling in such category. Lastly contended that injury caused to the deceased on scrotum was made basis for recalling the order, although the same is not spelled out either from the contents of crime report or is mentioned in MLR, hence, the order of learned High Court is untenable, passed beyond the record.

4. On the other hand, learned counsel for the complainant has stated that injury to the deceased was on vital part of the body. While elaborating his arguments, he argued that whole body sustained injuries by the hands of the petitioners which means that even the injury if not mentioned specifically in the medical report it can be assumed "cause of death" if surfaced subsequently hence could be taken into consideration, while basing findings of the court on it even in isolation.

5. We have heard the learned counsel for the parties and gone through the record with their able assistance.

The crux of the grievance invoked under section 497(5) Cr.P.C. by the complainant before learned High Court Peshawar was that the order passed by the learned trial court was in defiance of the material available on the record, hence, the same was not sustainable in the eye of law. Bare perusal of provision of section 497(5) Cr.P.C. it do not demonstrate any specific ground to press

into the pretense of said provision of law, however, superior courts of the country from time to time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-

- i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.
- ii) That the accused has misused the concession of bail in any manner.
- iii) That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.
- iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.
- v) That the accused has attempted to interfere with the smooth course of investigation.
- vi) That accused misused his liberty while indulging into similar offence.
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused.

6. Ordinarily the superior courts are reluctant to interfere into the order extending concession of bail; rather they have shown reluctance to intervene in such like matters. The rationale behind is that once concession of bail is granted by a court of competent jurisdiction then very strong and exceptional grounds would be required to hamper with the concession extended to a person who is otherwise clothed with free life, any contrary action of the court would be synonymous to curtailing the liberty of such person, which otherwise is a precious right guaranteed under the

Constitution of the country. Our judicial system has evolved beside others the concept of "benefit of reasonable doubt" for the sake of safe administration of criminal justice which cannot only be extended at the time of adjudication before the trial court or court of appeal rather if it is satisfying all legal contours, then it can be extended even at bail stage which is a sin-qua-non of a judicial pronouncement, hence, any unjustified action by the court of law intruding into the affairs would certainly frustrate the free life of an accused person after availing the concession of bail. It is not beyond the legitimate expectations that in our society mere levelling of accusation basing upon trumped-up charges is not something beyond imagination. Therefore, false implication/exploitation which has become epidemic in our society has to be safeguarded by the majesty of the courts. Unfortunately, our judicial system does not effectively provide appropriate speedy remedy for the rescue of innocent person rather it seldom helps those who are victim of such wrong doing rightly or wrongly, hence it is ensuing serious consequences in the fabric of society. This Court is fully conscious of this aspect. It is now established that every conviction/incarceration suffered by a person involved in a criminal case due to any possible reason can repair the wrong caused by a mistaken involvement but it cannot compensate him for the period he suffered by any means which further demonstrate undue frustration in the society at large. This concern of the society further casts duty upon the courts of law to adhere the dictum of reasonable doubt whenever it is surfaced to resolve it in favour of an entity which deserves it judiciously.

7. We have observed that the learned High Court has exercised the jurisdiction on the basis of material which is not substantiated from the record; hence, the order passed by the learned High Court seems to be in defiance of law laid down by this Court in the case of **Tariq Bashir and 5 others versus The State (PLD 1995 SC 34)**.

8. Another aspect of instant matter is that it has been established by this Court in various judgments that courts are reluctant to interfere as far as cancellation of bail is concerned even if the court is satisfied that the order passed by the court below is not sustainable in the eye of law, however, when material available on the record was evaluated it do not support misuse of concession by the accused in any manner. Hence, the cancellation of bail was declined; however, the matter was remanded back to the High Court if subsequently it comes on the record any material qua misuse of privilege at any stage. Reliance has been placed on the case **SHAHID ARSHAD versus MUHAMMAD NAQI BUTT AND 2 others (1976 SCMR 360)**.

9. In view of the facts and circumstances narrated above, we are of considered view that the recalling of order granting bail to petitioners by the learned trial court was squarely unjustified, hence we are persuaded to grant leave to appeal in the instant petition while converting it into appeal and the same is allowed. The petitioners shall be released on bail subject to their furnishing bail bonds in the sum of Rs.5,00,000/- each with one surety each in the like amount to the satisfaction of the learned trial court/Duty Judge.

10. Before parting with the order, it has been made clear that the observations made hereinabove are tentative in nature and it has no bearing during the course of proceedings before the learned trial court.

11. These are the reasons of our short order dated 08.05.2020 which is reproduced below:-

“For the reasons to be recorded separately, this petition is converted into appeal and is allowed. The petitioners are enlarged on bail subject to furnishing surety bonds in the sum of Rs.500,000/- each with PR bonds each in the like amount to the satisfaction of the trial court”

Judge

Judge

Islamabad,
08.05.2020
Approved for reporting
Athar