

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.1228/2020

(Against the order dated 01.10.2020
passed by Peshawar High Court,
Bannu Bench in BCA No.45-B/2020)

Sharif Khan	:	...	Petitioner(s)
		<u>Versus</u>	
The State and another	:	...	Respondent(s)

For the Petitioner(s) : Mr. Sher Afzal Khan Marwat ASC
Mr. Mehmood A. Sheikh AOR

For the (State) : Raja Muhammad Rizwan Satti, State
counsel for KPK

Date of Hearing : 26.11.2020

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ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J: - The petitioner has invoked the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the order dated 01.10.2020 passed by the learned single bench of Peshawar High Court, Bannu Bench in BCA No.45-B/2020 with a prayer to grant post arrest bail to the petitioner in the interest of safe administration of criminal justice.

2. As per allegation contained in the crime report bearing No.46/2020 dated 17.02.2020 offence under section 302/34 PPC registered with Police Station Tajori, District Lakki Marwat. It is mentioned that he alongwith two others while armed with Kalashnikov reached to the lands belonging to the complainant at 16:45 PM, in the meantime they all resorted to indiscriminate firing with their respective weapons. The complainant sustained injuries and fell down. All accused after

commission of offence decamped from the place of occurrence. Motive behind the occurrence is previous dispute over landed property. The petitioner applied for post arrest bail before the learned trial court which was allowed vide order dated 27.07.2020. The complainant being aggrieved by the order of learned trial court filed a petition BCA No.45-B/2020 for cancellation of bail before Peshawar High Court, Bannu Bench. The learned High Court adjudicated the matter and after hearing both the parties, accepted the application and recalled the bail granting order extended to the petitioner vide order dated 01.10.2020 hence, the instant petition.

3. At the very outset, it has been argued by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Further contends that the petitioner has no nexus with the crime alleged against him. Contends that the petitioner is an old man, aged 60/61 years and is also chronic cardiac patient. Contends that the petitioner joined investigation carried out by the local police where he pleaded his alibi. Contends that after a thorough probe, the plea extended by the petitioner was accepted and as such, the petitioner was declared innocent by the local police. Contends that nothing has been recovered from the petitioner. Contends that consideration for grant of post arrest bail and cancelation whereof are entirely on different footing. Contends that all those consideration were not taken into account by the learned High Court while recalling the order passed by the learned trial court. Lastly contends that the name of the petitioner was placed in column No.02 of the report u/s 173 Cr.PC hence he is entitled for the concession of bail on this score alone.

4. On the other hand, the learned counsel for the complainant argued that the petitioner is nominated in the crime report. The offence

charged against the petitioner entails capital punishment. Contends that the *ipse dixit* of the police is of no avail to the petitioner at this stage. Learned High Court has recalled the order on strong foundation and any interference by this Court would prejudice the case of the prosecution.

5. We have heard the learned counsel for the parties and gone through the record.

Undeniably, the petitioner is nominated in the crime report as one of the assailant besides two others who resorted to indiscriminate firing. In response to the accusation, the petitioner surrendered himself before the local police and pleaded his innocence while raising plea of alibi. The Investigating Officer in order to verify the plea raised by the petitioner, investigated the matter at length and finally came to the conclusion that the petitioner was not present at the spot at the time of occurrence. As a consequent, he was declared innocent while placing his name in the column No.02 of the report u/s 173 Cr.PC otherwise the deceased sustained two injuries whereas while lodging crime report, the complainant has assigned allegation against three persons who indulged into indiscriminate firing with their respective weapons. Contradiction regarding the number of assailant and injuries sustained by the deceased was also considered by the Investigating Officer. It is also an admitted fact that the allegation against all of the accused persons was generalized in nature and there was no specification of injury attributed to anyone of the assailants. These aspects were taken into consideration by the learned trial court while granting post arrest bail to the petitioner which order of the learned trial court was challenged and ultimately it was recalled by the learned High Court. The crux of the arguments advanced by the defence counsel relates to that the learned High Court has altogether ignored principles enunciated governing for grant of bail and cancellation whereof

as enunciated by the superior courts from time to time. The rationale behind said principle can be gauged from a salutary judgment titled as **Tariq Bashir and 05 others Versus The State** (PLD 1995 SC 34). Para No.09 of the aforesaid judgment is reproduced as under: -

“9. The consideration for the grant of bail and for cancellation of the same are altogether different. Once the bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof. To deprive a person on post arrest bail of the liberty is a most serious step to be taken. There is no legal compulsion to cancel the bail of the accused who allegedly has committed crime punishable with death, imprisonment for life or imprisonment for ten years”.

In a recent reported judgment titled as “**Sami Ullah and another Vs, Laiq Zada and other**” (2020 SCMR 1115) handed down by this Court has reiterated the same principles which are reproduced 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.*

Ordinarily the superior courts are hesitant to interfere into the order extending concession of bail; rather they have shown reluctance to intervene in such like matters. This very aspect was dealt by this Court in a judgment reported as **Shahid Arshad Versus Muhammad Naqi Butt and 02 others** (1976 SCMR 360). Though this Court was not pleased with the order passed by the learned single bench of the High Court however they refrain to exercise the power on this very ground which is reproduced as under: -

“In these circumstances although we are not happy about the order passed by the learned Single Judge of the High Court, we do not think it advisable to interfere with his order at this stage. If at any time any one of the said two respondents misuses the privilege of bail it will be open to the petitioner to approach the High Court for cancellation of bail.”

The intent 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 an accused who is otherwise clothed with free life, as a consequent of concession and if any view taken by the court it would be synonymous to curtailing the liberty of said accused prior to completion of trial, which otherwise is a precious right guaranteed under the Constitution of the country.

6. In view the facts and circumstances narrated above and law on the subject, we are of the considered view that learned Single Bench has erred in appreciation of law on the subject while recalling the bail granting order passed by the learned trial court hence, the same is set at naught, as a consequent we are of the opinion that the case of the petitioner is of further inquiry fully covered under section 497(2) Cr.PC entitling for concession of bail. As a consequence, leave to appeal is

granted in the instant petition while converting it into appeal and the same is allowed. The petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with two surety in the like amount to the satisfaction of the learned trial court/Duty Judge.

JUDGE

JUDGE

JUDGE

Islamabad/26.11.2020
Approved for reporting/B-III
Syed Rashid Maqsood