

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 1145-L OF 2020**

*(On appeal against the order dated 04.11.2020 passed by the Lahore High Court, Lahore in Crl. Misc. No. 39399-BC/2020)*

Zafar Iqbal, Mazhar Hussain & Muhammad Saleh

... Petitioners

**VERSUS**

The State etc

... Respondents

For the Petitioners: Mr. Abdul Khaliq Safrani, ASC a/w petitioners

For Respondent (2): Mr. Ahmed Khan Gondal, ASC

For the State: Mr. Muhammad Jaffar, Addl. P.G. a/w  
Mr. Qamar Abbas, ASI

Date of Hearing: 11.10.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order dated 04.11.2020 passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in cross-version recorded on 12.07.2020 under Sections 337-F(v)/337-F(i)/337-A(i)/109/147/149 PPC (Section 109 PPC was subsequently deleted) in case arising out of FIR No. 375/2020 dated 09.07.2020 registered under Sections 336/337-A(i)/109/34 PPC at Police Station Saddar Mandi Bahauddin, District Mandi Bahauddin in the safe administration of criminal justice.

2. Briefly stated the allegation against the petitioners is that they while armed with 'sotas' and 'kasyan' have trespassed into complainant's house and beaten the inmates, due to which the complainant and his brothers sustained injuries. The petitioners were booked in the above-referred cross-version. They applied for pre-arrest bail before the learned Additional Sessions Judge, Mandi Bahauddin and the learned Court while taking into consideration all the facts and circumstances of the case, allowed them bail vide order dated

15.08.2020 by a well reasoned detailed order. Being aggrieved, the complainant of the cross-version namely Abdul Rauf filed Criminal Miscellaneous No. 39399-BC/2020 before the High Court for cancellation of bail granted to the petitioners, which was adjudicated upon by a learned Single Bench of the High Court and vide order dated 04.11.2020, the bail granting order of the learned Additional Sessions Judge, Mandi Bahaudidin was recalled. Hence, the instant petition for grant of pre-arrest bail to the petitioners.

3. At the very outset, it has been argued by the learned counsel for the petitioners that the order passed by the learned Additional Sessions Judge, Mandi Bahauddin dated 15.08.2020 is well reasoned and when the petitioners have not misused the concession of bail, there was no reason for the learned Single Judge of the High Court to recall the bail granting order while touching upon the merits of the case. Contends that the consideration for grant of bail and cancellation whereof are entirely on different footing and none of the consideration for recalling the order is fulfilled by the learned High Court, therefore, the impugned order is not sustainable in the eyes of law.

4. On the other hand, learned Law Officer assisted by the learned counsel for the complainant has half-heartedly defended the order passed by the learned Single Judge. Learned counsel for the complainant conceded that on merits the petitioners have made out a case for grant of bail, which aspect was considered by the learned Additional Sessions Judge while confirming the ad interim pre-arrest bail to the petitioners. Contends that the High Court can touch upon the merits of the case if it finds that a bail granting order is perverse and capricious and as the order of the learned Additional Sessions Judge was against the law and the facts on the subject, therefore, the learned High Court has rightly recalled the same.

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

There is no denial to this fact that the superior courts of the country since long have issued guidelines wherein the details of the considerations for the grant of bail and cancellation whereof are highlighted. This Court while handing down a judgment reported as Shahid Arshad Vs. Muhammad Naqi Butt (1976 SCMR 360) although found that the bail granting order passed by the High Court is not sustainable in the eyes of law but yet restrained to interfere in such

*order on the ground that there was nothing to show that the accused had misused the concession of bail. In a recent judgment reported as Samiullah Vs. Laiq Zada (2020 SCMR 1115), this Court has enunciated the following principles for cancellation/recalling of bail:-*

- "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 with tends to establish guilt of the accused.*

6. When we confronted the learned Law Officer and the learned counsel for the complainant to show us from the record as to whether the petitioners have violated any of the above-said conditions on the basis of which their bail can be cancelled, they had no answer. In *Samiullah supra* case, this Court further held that "ordinarily the superior courts are reluctant to interfere into the order extending concession of bail. 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 must be extended even at bail stage which is a sine 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."* There is no denial to this fact that the petitioners have been nominated in the cross-version and FIR No. 375/2020 dated 09.07.2020 was registered against the complainant, who is one of the alleged injured of the cross-version. The learned Additional Sessions Judge while granting bail to the petitioners mainly took note of the fact that the occurrence took place on 04.07.2020 whereas the cross-version was recorded on 12.07.2020 after a delay of about 8 days, which has not been satisfactorily explained. He also took note of the fact that in the first medical examination of the injured, no bone fracture was observed but in the second report it came on record, which puts the story of the cross-version in mystery calling for further probe into the guilt of the petitioners, and that during the investigation the narration of the injuries by the complainant was found to be false. The learned High Court in the impugned order did not discuss these aspects of the matter at all. In view of the law laid down by this Court, we are constrained to observe that the learned High Court while recalling the bail granted to the petitioners has fell into error.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 04.11.2020 passed by the learned Single Judge of the High Court. The petitioners are admitted to pre-arrest bail subject to their furnishing bail bonds in the sum of Rs.200,000/- each with two sureties each in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Lahore, the  
11<sup>th</sup> of October, 2021  
Approved For Reporting  
**Khurram**