

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Faisal Arab
Mr. Justice Sajjad Ali Shah

CRIMINAL PETITION NO.105-K OF 2020

(Against the order dated 19.05.2020 of the
High Court of Sindh, Karachi passed in
Criminal Bail Application No.131 of 2020)

Sidra Abbas

...Petitioner(s)

Versus

The State and another

...Respondent(s)

For the Petitioner(s): Mr. Faisal Siddiqui, ASC

For the State: Mr. Hussain Bux Baloch, Additional
Prosecutor General

For Respondent No.2: Mr. Fareed Ahmed A. Dayo, ASC

Date of Hearing: 10.09.2020

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ORDER

SAJJAD ALI SHAH, J.- The respondent, Adil Zaman,
accused of Crime No.382/2019 under Section 302/34 PPC
registered at Police Station Darakhshan, Karachi was declined
post-arrest bail by the Court of first instance for the following
reasons:-

“Complainant Mst. Sidra Abbas has alleged in
FIR that on the evening/night of 09.07.2019
she was available at her house when at about
2038 wife of PW Umer Rehan via phone
informed her that Mureed Abbas had been
shot by accused Atif Zaman at his office, on
that complainant reached at spot and found
her husband in pool of blood to whom she
with help of her father-in-law shifted to JPMC
Hospital for treatment where MLO declared
the Mureed Abbas dead. Complainant further
alleged in FIR that accused Atif Zaman had
also committed murder of one Khizer Hayat
on the same night. In FIR, motive of accused
Atif Zaman behind murders was stated to be

monetary dispute amongst deceased and accused Atif Zaman. Per averments of FIR, the complainant was not present at spot at the time of both alleged incidents of murders, therefore, allegations against the accused are required to be ascertained through the material/evidence collected during investigation. After lodgment of First Information Report, IO had recorded 161 Cr.P.C. statements of OW Umer Rehan and Usama, who were present at the office accused Atif Zaman at the time of occurrence, and both PWs in their 161 Cr.P.C. statements stated that the present applicant/accused was accompanied with accused Atif Zaman rather caught hold of PW Umer Rehan when he beseeched for life. Likewise the witnesses of the incident of murder of Khizer Hayat namely Imtiaz and Muhammad Ilyas in their 161 Cr.P.C. statements stated that one unknown man had joined the accused Atif Zaman soon after firing upon Khizer Hayat at the spot and later on during Identification Parade proceedings PWs identified the applicant/accused to be the same person. The crime weapon allegedly recovered from the possession of accused Atif Zaman is the licensed Pistol of the applicant/accused and such verification letters of Home Department are available with the police papers. The company of the applicant/accused with co-accused and his presence at the both instances i.e. places of first murder of Khizer Hayat and subsequent murder of Mureed Abbas show that he had been in league with co-accused Atif Zaman in committing murders, therefore, material so available with the prosecution in shape of 161 Cr.P.C. & 164 Cr.P.C. statements, Identification Parade proceedings, license of the crime weapon in the name of the applicant/accused and further registration of FIR No.398/2019 of P.S. Darakhshan under section 25 Sindh Arms Act, 2013 connects him with the crime. The accused is charged with section 302 PPC, as such same falls within prohibitory clause of 497 Cr.P.C. For the reasons mentioned hereinabove the applicant/accused has failed to make prosecution case against him of further inquiry, hence bail application merits no consideration and is hereby dismissed.”

2. It appears that the said accused Adil Zaman approached the High Court of Sindh which, through impugned

order, enlarged the accused on bail by holding that the case against the accused was of further inquiry. The following reasoning prevailed with the High Court to come to such conclusion:-

“5. Admittedly the complainant is not the eye-witness of the incident and she had lodged the FIR on the information received by her from wife of PW Umar Rehan via phone. After lodgment of the FIR the Investigating Officer had recorded 161 Cr.P.C. statements of PWs namely Umar Rehan and Usama who were present at the place of incident who stated that present applicant was accompanied with accused Atif Zaman. Similarly witnesses of murder of Khizer Hayat in their 161 Cr.P.C. statements stated that one unknown man had joined the accused Atif Zaman soon after firing. Perusal of record reveals that prosecution witness have only leveled the allegation of mere presence and nothing else against the present applicant. The complainant has stated in the FIR that wife of PW Umar Rehan had informed her through phone about the incident which means that PW Umar Rehan has relations with the complainant party therefore false implication cannot be ruled out. Mere presence of applicant at the spot with no specific role does not disentitle him from concession of bail. Prima facie, case against applicant appears to be doubtful benefit of which shall go to the applicant.”

3. The petitioner who is the complainant and wife of deceased Mureed Abbas seeks leave of this Court against the order of the High Court.

4. Mr. Faisal Siddiqui, learned counsel appearing for the petitioner, has argued that two murders were committed within an interval of half an hour by Atif Zaman, the main accused of the crime who happens to be the real brother of the respondent Adil Zaman. Per counsel the sole consideration which prevailed with the High Court to enlarge the respondent Adil Zaman on bail was that he was merely present at the scene of crime and that no active role was assigned to him, but the fact remains that the respondent had accompanied his brother when the first murder of Khizer

Hayat was committed as an eye-witness has stated that an unknown man joined the main accused, Atif Zaman, at the time when he was escaping from the scene after firing at Khizer Hayat, and at subsequent stage the unknown man was identified as respondent, Adil Zaman. Within next half an hour the second murder of Mureed Abbas was committed by the main accused, Atif Zaman, and he was again accompanied by respondent Adil Zaman, which is sufficient to show that they shared common intention. The counsel has further referred to 161 and 164 Cr.P.C. statements of an eye-witness of the crime, namely Umar Rehan, who stated that Atif Zaman in his presence committed murder of Mureed Abbas. The eye-witness further asserted that he caught hold of Atif Zaman's hand in which he was holding pistol and the co-accused, Adil Zaman, helped to get Atif Zaman's hand released from his grip. Per counsel it is an active role and sufficient material to connect the respondent with the commission of the crime which was not taken into consideration by the High Court while upsetting the order of the Trial Court. The counsel further argued that it has also been established that the pistol used in the crime was supplied by respondent No.2 as report on record reveals that it was his licensed pistol, again this fact which prevailed with the Court of first instance to decline bail to accused Adil Zaman was not attended rather ignored by the High Court while granting bail.

5. On the other hand, Mr. Farid Ahmed Dayo, learned counsel appearing for respondent Adil Zaman contended that the petitioner has failed to meet the parameters laid down by this Court to seek cancellation of bail. In this regard he has referred to the judgments of this Court reported as Sami Ullah and another Vs. Laiq Zada and another (2020 SCMR 1115), Khiyal Saba and

another Vs. The State and others (2020 SCMR 340) and Nadeem Vs. The State and another (2016 SCMR 1619). The counsel asserts that since the respondent has not misused the concession of bail, therefore, the petition may be dismissed. The counsel has further contended that though in 164 Cr.P.C. statement eye-witness, Umar Rehan, stated that respondent, Adil Zaman, has helped the principal accused in getting release from his grip but such statement was not made in his earlier 161 Cr.P.C. statement recorded by the police. He next contended that other factors also prevailed with the Court to enlarge the respondent on bail and, therefore, such concession could only be recalled once misuse of concession is established.

6. We have heard the learned counsel for the respective parties and perused the record.

7. A careful perusal of the submissions show that the case law cited by Mr. Dayo is of no help in the circumstances of this case, as the petitioner is not seeking cancellation of concession on the ground of its misuse but on the ground that the order impugned through which bail has been granted is perverse because the High Court ignored the material available on the record which was made basis of bail declining order and which suggests active involvement of the accused Adil Zaman in the commission of the aforesaid offence. It should not be ignored that the concept of setting aside the unjustified, illegal, erroneous or perverse order to recall the concession of bail is altogether different than the concept of cancelling the bail on the ground that the accused has misused the concession or misconducted himself or some new facts requiring cancellation of bail have emerged.

8. In light of the dictum laid down in Sami Ullah v Laig Zada 2020 SCMR 1115 and The State/Anti-Narcotic v Rafique Ahmed Channa 2010 SCMR 580, it is a settled principle of law that a bail granting order can be cancelled if the same is perverse. In legal parlance, a perverse order is defined as an order which is, *inter alia*, entirely against the weight of the evidence on record.¹ It is always to be kept in mind that in cases where the court granting bail ignores relevant material indicating *prima facie* involvement of the accused in the commission of crime or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, then the Court reviewing such order would be justified in cancelling the bail.

9. A similar definition was relied upon by the Supreme Court of India in Puran v. Rambilas (2001) 6 SCC 338, wherein it was held that an order granting bail would be perverse and contrary to the principles of law if the same was passed by ignoring material evidence on record and without giving reasons. In the circumstances of this case, there is no cavil with the proposition, as is evident from the record, that the only consideration which prevailed with the High Court to upset the bail-declining order of the Court of first instance and to enlarge the respondent on bail was that there is nothing against him except his presence which could not lead to a conclusion that the respondent shared a common intention with the principal accused, Atif Zaman. However, in our opinion, the alleged presence of accused Adil Zaman with his brother Atif Zaman, the principal accused at both the crime scenes where two murders one after the other within a short span of half an hour were committed, coupled with the fact

¹ Words and Phrases, Permanent Edition, Vol. 32 (Publisher: West Publishing Co.) pp.-712.

that both the accused are real brothers and the pistol used in the crime belongs to accused Adil Zaman, speaks volumes which could hardly be rated as coincidence. Additionally, the observation of the High Court that the only allegation against respondent No.2 is his presence at the crime scene also appears to be contrary to record as the eye-witness, Umar Rehan, has assigned active role of facilitation to the respondent, Adil Zaman, both in his 161 and 164 Cr.P.C. statements, which fact prevailed as prime consideration with the Court of first instance to decline the bail to the petitioner.

10. Furthermore, no doubt that it has been settled by this Court through its numerous pronouncements that the courts should rarely and in exceptional circumstances interfere with the bail granting orders. Reference in this regard can be made to Mst. Noor Habib v Saleem Raza 2009 SCMR 786, Muhammad Azhar v Dilawar 2009 SCMR 1202 and Ehsan Akbar v The State 2007 SCMR 482. However, one thing which is to be kept in mind is that in cases where the Court of first instance has through a reasoned order refused concession of bail to an accused in non-bailable cases, then the Court of Appeal while reversing such order cannot simply ignore the reasoning which prevailed with the Court of first instance while refusing the concession of bail. The Court of appeal of course exercises concurrent jurisdiction and has all the powers to review such orders by taking a different view on the same facts if it finds that the Court of first instance in the circumstances of the case has failed to exercise its discretion in accordance with the principles settled by this Court by unnecessarily withholding such concession. However, the Court while reviewing such order should not simply ignore the reasoning prevailed with the Court for declining bail. There is no cavil that discretion should be liberally

exercised in favour of accused but not to an extent to render the provisions of Section 497 Cr.P.C. as redundant.

11. In this case, the High Court not only ignored the reasons that prevailed with the Court of first instance for refusing the concession of bail to the accused, Adil Zaman, but also did not consider the material available on record that suggests active role of the said accused in the commission of the aforesaid offence. Indeed, the conclusion of the Court of first instance that there was sufficient material with the prosecution to connect the respondent with the commission of crime could not have been upset on the basis of observations contrary to the record. The impugned order, therefore, is found to be perverse and accordingly set aside. In the circumstances, we, by converting this petition into an appeal and allowing the same, cancel the bail granted to the respondent, Adil Zaman, by the High Court vide order dated 19.05.2020. Needless to observe that the trial Court would be free to decide the main case without being influenced from any observation strictly in accordance with law.

12. These are the reasons of our short order of even date which reads as follows:

“Heard the Counsel for the parties. For the reasons to be recorded later, this Criminal Petition is converted into appeal and allowed. Bail granted by the High Court to respondent Adil Zaman is hereby cancelled”.

Judge

Judge

Karachi, the
10th of September, 2020
Not approved for reporting
A. Rehman