

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE MAQBOOL BAQAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 632 OF 2021**

*(On appeal against the order dated 24.05.2021 passed by the Peshawar High Court, Peshawar in CrI.MBA No. 1148-P/2021)*

Abdul Majid Afridi

... Petitioner

**VERSUS**

The State and Abdul Latif Afridi

... Respondents

For the Petitioner:

Mr. Sher Afzal Khan Marwat, ASC

Mr. Mehmood Ahmed Sheikh, AOR

For the State:

Mr. Anis Muhammad Shahzad, Addl. P.G

Mr. Namir, I.O

Date of Hearing:

08.11.2021

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** *The petitioner through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, sought cancellation of bail granted to the respondent vide FIR No. 229/2021 dated 04.04.2021 U/s 302 / 324 / 148 / 149 / 109 / 427 / 353 / 34 PPC read with Section 7 of the Anti Terrorism Act, 1997 registered with Police Station Lahor, District Swabi by the Peshawar High Court vide order dated 24.05.2021 in the interest of safe administration of criminal justice.*

2. *As per allegations contained in the FIR, it is alleged that the said occurrence in which four persons lost their lives including one pregnant lady of advanced stage along with two other, who sustained injuries, was committed on the instigation/abetment of respondent. After the registration of the aforesaid crime report respondent filed a direct petition seeking anticipatory bail before the High Court which was confirmed vide order dated 24.05.2021, the said order is impugned before us. Hence the instant petition.*

3. *At the very outset, it has been argued by the learned counsel for the petitioner that there is no denial to this fact that the*

respondent and the complainant party were inimical towards each other with previous enmity of murders. Contends that the main assailants in the aforesaid crime report are closely related to the respondent, hence, there is very strong reason to believe that the instant occurrence has taken place at the behest of the respondent. Contends that the accused persons hatched the conspiracy in the 'hujra' of the respondent, which was subsequently materialized resulting into death of four persons including one woman, who was six months pregnant. Contends that one of the deceased was District & Sessions Judge; otherwise it has taken place in a populated area, therefore, it stirred the public peace and security due to its gravity, hence, the relief extended by the High Court is uncalled for. Contends that the respondent had directly filed petition before the High Court to get the relief of pre-arrest bail, which is against normal practice and even during the pendency of the petition, the respondent was burdened with an amount of Rs.20,000/- to be deposited to a charitable foundation on the basis of a mis-statement, therefore, this aspect in "isolation" is sufficient to accede to the prayer of the petitioner before this Court. Contends that the respondent remained the President of the Bar and due to office he enjoyed, extraordinary relief of pre-arrest bail was extended to him. Lastly it is argued that in all eventualities, it is a fit case for interference by this Court in the interest of justice.

4. On the other hand, the learned Law Officer has defended the impugned order by contending that there is nothing on record, which could suggest that the respondent has misused the concession of bail in any manner, therefore, in absence of any material, which is essential for cancellation of bail, the impugned order may be upheld.

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

Prior to touching upon the merits of the case, we deem it appropriate to discuss the preliminary objection raised by the learned counsel for the petitioner that the respondent had filed a direct petition seeking pre-arrest bail before the High Court without exhausting the remedy of approaching the Court of first instance.

*There is no denial to this fact that the jurisdiction of the Sessions Court and the High Court is concurrent in nature. The learned High Court while adjudicating the matter has given cogent reasons especially when it is admitted that one of the deceased was himself a District & Sessions Judge, therefore, any order if would have been passed either way that would have been considered prejudicial because of the reason that the deceased was member of the district judiciary. Even otherwise, the respondent has not availed one remedy, which was available to him while agitating his grievance before the High Court, therefore, he lost one opportunity causing no prejudice to complainant party.*

6. *On merits, we deem it of prime consideration to evaluate the material available on the record to connect the respondent with the accusation as alleged against him. We have perused the crime report with naked eye and found that the complainant while lodging crime report has not mentioned specific date, time and place where the conspiracy was hatched. Even name and number of witnesses to that extent is not incorporated while lodging the FIR. During the course of arguments, it was informed that one of the assailants, who was taken into custody, made a confessional statement under Section 164 Cr.P.C. In his statement, he has admitted the instant occurrence and has pointed out towards the respondent being head of the family to instigate the others to commit the aforesaid occurrence. Perusal of the statement clearly reflects that an incident had taken place way back in the month of April, 2020 when 'jirga' was convened between the families to settle down the blood feud between the parties, however, it ended in exchange of hot words where the respondent had extended threats of dire consequences to one of the deceased Aftab Afridi. The confessional statement is reproduced for its perusal:-*

"ہمارے اور مقتول آفتاب آفریدی کے خاندانوں میں قتل و قاتلہ کی دشمنی چلی آرہی تھی جس کا پہل فریق مخالف نے کیا تھا۔ فریق مخالف نے رشتہ دار ام مسمی وزیر اکبر خان جو کہ رشتے میں میرے چچا لگتا تھا اسے قتل کیا تھا۔ اسکے قتل کے سلسلے میں ہر دو خاندانوں کے درمیان اپریل 2020ء تک جڑے ہوئے لیکن اس میں مقتول جج آفتاب اپنی صفائی پیش نہیں کر سکا۔ ان جڑگوں کے دوران عبداللطیف آفریدی اور مقتول جج آفتاب آفریدی کے درمیان تلخ کلامی بھی ہوئی جس کے بعد خانگی جڑگوں کا سلسلہ منقطع ہوا۔ اس کے بعد مقتول وزیر اکبر کا بھلے خاندان جرم و دعوئی منقطع ہوا۔ اس کے بعد ہمارے خاندان والوں نے مقتول جج آفتاب آفریدی کو قتل کرنے کا فیصلہ کیا۔"

7. The statement of one accused in "isolation" does not advance the prosecution case except at the most it is a statement of a co-accused. We have noticed that there is nothing on the record where the prosecution has advanced its case qua conspiracy in any manner except the bald allegation which is incorporated in the FIR without citing any witness of the said aspect of the case. The statement of one of the assailants recorded under Section 164 Cr.P.C in all fairness is a statement of co-accused, hence, no deviation can be made against the established principle of law that statement of one accused cannot be used against the other in absence of any attending material produced by the prosecution. Reliance is placed on Nouman Khan Vs. The State (2020 SCMR 666) & Muhammad Sarfraz Ansari Vs. The State (PLD 2021 SC 738). Perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment. All these three ingredients of Section 107 PPC are prima facie missing from the record. We do not want to give any finding in this regard because it can prejudice the case of either of the party. It is now established without any hesitation that considerations for the grant of bail and cancellation whereof are entirely on different footings. Generally speaking, the Courts are reluctant to interfere in the order of grant of bail and even in cases where it is apparently found that the bail granting order is not sustainable in the eyes of law, the Courts restrain to interfere in such matters if it is found that there was nothing to show that the accused has misused the concession of bail. Reliance is placed on Shahid Arshad Vs. Muhammad Naqi Butt (1976 SCMR 360). In a recent judgment reported as Samiullah Vs. Laiq Zada (2020 SCMR 1115), which was further followed in Criminal Petition Nos. 1459/2020, 1523/2020, 970 to 976/2021 & Criminal Petition No. 1145-L of 2020, this Court has held that for the purpose of cancellation of bail, following considerations are to be satisfied:-

- "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."

9. When we confronted learned counsel for the petitioner with the above-said guidelines, he could not point out on record as to whether the respondent has violated any of the afore-referred conditions, which could become basis for cancellation of bail granted to him. The accumulative effect of the reasons given above is that the order impugned before us is in accordance with law and learned counsel for the petitioner has failed to justify that the High Court has erred in deciding the matter, which by any stretch of imagination could be termed as perverse, arbitrary and fanciful. During the course of proceedings, the learned counsel for the petitioner brought to the notice of this Court that the family of the deceased Judge Aftab Afridi is being threatened through social media for dire consequences and in this regard three complaints have been lodged with Federal Investigating Agency. In this view of the matter, the CCPO Peshawar is directed to provide adequate security to the legal heirs of the deceased Judge. The concerned Director FIA is also directed to inquire into the contents of the complaints and if found actionable proceed strictly in accordance with law.

10. For what has been discussed above, we do not find any merit in this petition, which is accordingly dismissed and leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the  
8<sup>th</sup> of November, 2021  
Approved For Reporting  
Khurram