IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(D.J) AFR
CRIMINAL PETITION NO. 124 OF 2022
(On appeal against the order dated 01.02.2022 passed by the Lahore High Court, Lahore in Crl. Misc. No. 21507-B/2021)

Muhammad Amjad Shahzad

... Petitioner

VERSUS

Muhammad Akhtar Shahzad and another

... Respondents

For the Petitioner:	Sardar Muhammad Latif Khan Khosa, Sr. ASC Ch. Akhtar Ali, AOR
For the Respondent:	Mr. Shoukat Aziz Siddiqui, ASC Syed Rifaqat Hussain Shah, AOR a/w respondent
For the State:	Mr. Ahmed Raza Gillani, Addl. P.G. Mr. Akhtar Nawaz, ASP Wazirabad Mr. Tariq Mehmood, S.I.
Date of Hearing:	30.03.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks cancellation of bail granted to the respondent Muhammad Akhtar Shahzad by the learned Lahore High Court, Lahore vide order dated 01.02.2022 in case registered vide FIR No. 224 dated 07.05.2019 under Sections 302/109 PPC at Police Station Saddar Wazirabad, District Gujranwala, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the respondent is that he committed murder of his real father and brother by firing upon them with pistol 9 mm.

The motive behind the occurrence as mentioned in the crime report is that the respondent had exchange of hot words with the father as he was demanding share of inheritance from the property of the father in his lifetime, which was resisted by the deceased father.

3. At the very outset, learned counsel for the petitioner/complainant argued that the respondent is specifically nominated in the crime report with an allegation of causing firearm injuries on the person of both the deceased. Contends that there is no question of mis-identity as the respondent is real brother of the complainant and the PWs. Contends that the allegation of causing firearm injuries is fully established from the medical record, which is in line with the prosecution version. Contends that the respondent remained absconder for a period of one year, which *prima facie* shows his involvement in the aforesaid crime. Contends that the respondent is involved in series of cases of similar nature and as such he can be dubbed as hardened criminal. Contends that the weapon of offence has already been recovered from the respondent, which matched with the empties recovered from the scene of occurrence one year earlier. Contends that the order of the learned High Court is not sustainable in the eyes of law as the grounds taken for the grant of bail relates to statement of one of the PWs under Section 161 Cr.P.C when she has taken a somersault after considerable time and as such the same has no legal value. Lastly it is contended that the impugned order is patently illegal, perverse and fanciful, as such the same is not sustainable in law by any stretch of imagination.

4. Learned Law Officer concurred the arguments advanced by the learned counsel for the complainant in letter and spirit.

5. On the other hand, learned counsel for the respondent has made an attempt to defend the impugned order on the ground that the considerations for the grant of bail and cancellation whereof are entirely

on different footing. Contends that the FIR was lodged with inordinate delay of more than 9 hours for which no plausible explanation has been given. Contends that as new avenues in the prosecution version have been opened, therefore, the respondent has made out a case for further inquiry, consequently the bail granted to him cannot be recalled on the basis of perversity. Contends that when one of the witness has made two divergent statements, it becomes the case of two versions and as such the case of the respondent is covered by Section 497(2) Cr.P.C. Contends that the respondent had made an attempt to advance his version, which is contrary to the prosecution case, however, the same has not been accredited by the Investigating Officer during course of investigation. However, he states that the private complaint has been filed by the respondent, which is at the stage of preliminary proceedings. Contends that this petition for cancellation of bail is not sustainable in the eyes of law, hence, is liable to be dismissed.

6. We have heard learned counsel for the parties at some length and have perused the available record.

The instant case has a chequered history, which is worth mentioning. There is no denial to this fact that the respondent is nominated in the crime report with specific accusation of causing firearm injuries on the person of his real father and brother, resulting into their brutal murder. The matter was reported to the police with inordinate delay of 9 hours but the delay in this case has been fully explained. It is mentioned without any doubt that after sustaining injuries, the brother of the respondent was taken to nearby Tehsil Headquarter Hospital, Wazirabad, but due to his precarious condition, he was shifted to District Headquarter Hospital, Gujranwala, therefore, the time consumed in transportation cannot be used against the complainant and as such the element of delay in lodging the FIR is fully satisfied, as according to the record the deceased has died in DHQ Hospital, Gujranwala. The injuries ascribed to the respondent are fully supported by medical evidence. Apart from this, it is worth mentioning that the respondent after commission of the offence absconded himself and thereafter he filed three successive

applications for pre-arrest bail before the High Court after its dismissal from the court of first instance. The first bail petition bearing Crl. Misc. No. 41490-B/2019 was dismissed due to non-prosecution on 14.10.2019. Another application bearing Crl. Misc. No. 61063-B/2019 was dismissed for non-prosecution vide order dated 25.10.2019. Lastly, the third one bearing Crl. Misc. No. 64967-B/2019 was also dismissed for non-prosecution on 01.11.2019. Finally, the respondent was taken into custody on 04.05.2020 after dismissal of third application and thereafter, he was granted post-arrest bail vide impugned order dated 01.02.2022. It is apathy to point out that the main ground on which the learned single bench granted post-arrest bail to the respondent is that one of the witness has taken a somersault contrary to the earlier statement made under Section 161 Cr.P.C. and filed a private complaint wherein she has advanced a story altogether different to the story advanced by the prosecution. This solitary ground, if taken in favour of the respondent, it will open new avenues, contrary to the safe administration of criminal justice whereby at any stage if one of the witness makes a divergent statement to the earlier one bringing the case within the ambit of Section 497(2) Cr.P.C. then it will transform into mockery in the eyes of law. We have noticed that it has become customary in number of cases that each one of the witness after settling his score with the accused party comes forward to file a complaint contrary to the prosecution case with an intent just to frustrate the case of the prosecution. This practice cannot be ordained in any manner. The prosecution witness at any stage may repudiate from the earlier statement and can make a divergent statement before the court during the course of trial enabling the prosecution an opportunity to get him declared hostile and cross-examine so that truth can be brought on the record. Probably same is the situation in this case where one of the sister of the respondent had made statement under Section 161 Cr.P.C in line with the prosecution version at the time of lodging of crime report but subsequently after lapse of more than one year, she had taken a different stance while making a statement, which is contrary to the prosecution version with an intent to benefit the respondent. As the respondent is

involved in number of cases of similar nature and having clandestine background, the possibility of fear and undue pressure faced by the witness cannot be ruled out, as argued by the learned counsel for the petitioner/complainant. As far as the argument of learned counsel for the respondent that the considerations for the grant of post-arrest bail and cancellation whereof are entirely on different footing, it is worth mentioning that it is a case where the learned High Court while granting bail has misinterpreted the considerations in toto and has exercised discretion arbitrarily, fancifully and in complete disregard to the principles enunciated by this Court, which cannot be given assent by this Court. Apart from this, we have noticed that the alleged recovered pistol 9mm from the respondent on 08.05.2020 was sent to the office of the Forensic Science Agency and all the empties recovered from the place of occurrence were found to be fired from the same, a positive report has been issued by the said Agency. We have specifically inquired from the learned counsel for the respondent about the stage of the private complaint lodged by the respondent to which he informed that the private complaint is still at the preliminary stage and even no notice has been issued to the respondents mentioned over there, therefore, the same is of no help to the respondent. We have been informed that several FIRs of similar nature have been registered against the respondent. Although learned counsel for the respondent vehemently stated that in all of the cases, the respondent has been acquitted of the charge but no document in this regard could be placed on record, however, it is also controverted by the Investigating Officer present in the court. The learned High Court did not take into consideration any of the above-said aspects of the matter, therefore, we are constrained to hold that the reasoning advanced by the learned High Court while granting bail to the respondent is artificial, fanciful and without any legal justification. We are under bounden duty to attend to the facts and circumstances of the *lis* brought before us and to evaluate the same in such a manner so that no injustice is caused to either of the party. In the instant case, the learned High Court has not given any justiciable reasoning to bring the case of the respondent within the ambit

of Section 497(2) Cr.P.C calling for further probe into his guilt. In our opinion, in the instant case the learned High Court while granting bail to the respondent has erred in law and facts and has passed an order which is illegal, perverse, fanciful, arbitrary. As a consequence, we convert this petition into appeal, allow it, set aside the impugned order and cancel the bail granted to the respondent by the learned High Court vide impugned order dated 01.02.2022. The above are the detailed reasons of our short order of even date.

Islamabad, the
30th of March, 2022
Approved For Reporting
Khurram