

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL REVISION NO. 53 OF 2023

MUHAMMAD SHAHID FAROOQ.

Vs.

THE STATE AND ANOTHER.

Petitioner by : **Mian Muhammad Zafar, Advocate.**

State by : **Hazrat Younas, State Counsel.**
Mr. Ghulam Qasim Bhatti, Advocate for
Respondent No. 2/Complainant.
Mr. Imtiaz Ahmed, ASI/I.O.

Date of Decision : **09.06.2023.**

SAMAN RAFAT IMTIAZ, J.:- Through the instant Criminal Revision Petition, the Petitioner [Muhammad Shahid Farooq] has assailed the Order dated 20.10.2020 (“**Impugned Order**”) passed by the learned Sessions Judge, Islamabad (West), whereby the Respondent No. 2/Complainant’s [Muhammad Ramzan Bhatti] Petition for the Cancellation of Bail after Arrest has been allowed and the Order dated 24.03.2020 granting bail to the Petitioner (“**Bail Granting Order**”) passed by the learned Judicial Magistrate, Islamabad (West) has been recalled.

2. The necessary facts, as per the contents of the Memo of Petition, are that the FIR No. 146 dated 12.03.2020 was registered against the Petitioner under Section 489-F, P.P.C. at police station Golra Shareef, Islamabad. The Petitioner was arrested in the said FIR on 13.03.2020 but was granted post arrest bail vide the Bail Granting Order. The Respondent No. 2 / Complainant filed Petition under Section 497(5) Cr.P.C., for Cancellation of Bail after Arrest before the Sessions Court, Islamabad (West) on 25.06.2020 which was allowed vide the Impugned Order and the Bail Granting Order was recalled, hence, the present Criminal Revision Petition.

3. The learned counsel for the Petitioner, *inter alia*, contended that the Bail Granting Order was passed in view of Order dated 20.03.2020 passed by the Islamabad High Court whereby the under trial prisoners alleged to have committed offences not entailing punishment falling within the ambit of the prohibitory clause of Section 497 Cr.P.C., were directed to be released on bail owing to the pandemic

situation of Corona Virus threat; that the Impugned Order has been passed in the Petitioner's absence; that the Challan was submitted before the learned Trial Court during the Covid-19 Pandemic when the Court was not properly functioning; that the Petitioner neither had any information regarding submission of Challan nor any notice was served upon him and he was declared proclaimed offender on 26.10.2020; and that the Petitioner has already made partial payment of Rs. 585,000/- to the Respondent No. 2/Complainant through his son and is ready to pay the remaining amount of Rs. 415,000/- but the Respondent No. 2/Complainant is blackmailing the Petitioner. The learned counsel for the Petitioner highlighted that out of the twelve FIRs that were taken into consideration by the learned Sessions Judge, Islamabad (West) while passing the Impugned Order the Petitioner has already been acquitted in six of them pursuant to compromise with the complainants, whereas, the one appearing at serial No. 7 does not pertain to the Petitioner. The learned counsel in support of his contentions placed reliance on *Abdul Majid Afridi versus The State and another*, 2022 SCMR 676, *Isfandiyar versus The State*, 2018 YLR 201, *Arbab and others versus The State*, 2006 P Cr.L.J. 494, *Bashir Khan versus The State and another*, PLD 2005 Peshawar 98, *Arif Sharif versus Chairman, NAB*, 2004 SCMR 1805 as well as Orders passed by the Supreme Court of Pakistan in *Raja Muhammad Nadeem versus The State and another*, Criminal Petition No. 299 of 2020 and by this Court in *Fawad Hassan Abbasi versus Zain ul Abdin and another*, Criminal Miscellaneous No. 608-B.C./2022 and *Muhammad Zahid versus The State, etc.* Criminal Miscellaneous No. 19-B/2022.

4. The learned counsel for the Respondent No. 2/Complainant while supporting the Impugned Order submitted that the Petitioner is a habitual offender who was declared proclaimed offender and a number of other criminal cases have also been registered against him; and that even otherwise the Order dated 20.03.2020 passed by the Islamabad High Court has been set aside by the Supreme Court of Pakistan vide Order dated 07.04.2020 passed in the case of *Raja Muhammad Nadeem (Supra)*.

5. The learned State Counsel adopted the arguments of the learned counsel for the Respondent No. 2/Complainant and submitted that the Petitioner is not 55 years old and as such does not fall within the exceptions created by the Supreme Court

vide Order dated 07.04.2020 passed in the case of *Raja Muhammad Nadeem (Supra)*. He further stated that there is likelihood of Petitioner repeating the offence given that there are more than ten other FIRs registered against him, therefore, instant Criminal Revision Petition is liable to be dismissed.

6. I have heard the learned counsel for the parties as well as the learned State Counsel and have also perused the available record.

7. The Petitioner was admittedly granted bail vide the Bail Granting Order in pursuance of the Order dated 20.03.2020 passed by this Court in the case of *The State versus the District Administration, ICT, Criminal Miscellaneous No. 214/2020*, whereby the under trial prisoners alleged to have committed offences not entailing punishments falling within the ambit of the prohibitory clause of Section 497 Cr.P.C., were admitted to bail owing to the pandemic situation of corona virus threat. I have examined the Order dated 07.04.2020 passed by the Supreme Court of Pakistan in case of *Raja Muhammad Nadeem (Supra)* which does not support the contention of the learned counsel for the Respondent No. 2 /Complainant. The Supreme Court has indeed set aside the directions given by the afore mentioned Order of this Court and bails granted thereunder were recalled albeit with the exception of certain categories including under trial prisoners for offences not entailing punishment falling within the prohibitory clause of Section 497 Cr.P.C. In the instant case, the Petitioner is alleged to have committed the offence under Section 489-F, Cr.P.C., which does not attract the prohibitory clause of Section 497 Cr.P.C.

8. I also do not agree with the contention of the learned State Counsel that the Petitioner does not fall within the exception created by the Supreme Court as he is not of 55 years of age. The Petitioner does not come under the bar created by the Supreme Court as he is not involved in any case involving abuse/violent acts against women and children. The Supreme Court has not created any restriction in respect of men under 55 years of age. The only caveat created by the Supreme Court was that certain persons would be given priority out of the ones eligible for bail as aforesaid which included under trial prisoners above the age of 55 and then only other men would be considered provided there is no history of conviction. Admittedly the Petitioner is not a prior convict. Therefore the Bail Granting Order of the learned Judicial Magistrate, Islamabad (West) was not only in accordance

with the directive of this Court but the bail granted to the Petitioner as a result thereof was not liable to cancellation pursuant to the Supreme Court Order passed subsequently whereby the directions given by this court were modified.

9. Courts are reluctant to interfere in the Bail Granting Order even where such order is found not sustainable in the eyes of the law provided there is nothing to show that the accused has misused the concession of bail or in the absence of any other ingredient as listed in *Abdul Majid Afridi versus The State and another* 2022 SCMR 676 and *Sharif Khan versus The State*, 2021 SCMR 87, which are reproduced hereunder for convenience:-

- “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 have been collected during the course of investigation which tends to establish guilt of the accused.”*
[Emphasis added].

However, the learned counsel for the Respondent No. 2/Complainant failed to show the existence of any of the above circumstances held necessary for the purpose of cancellation of bail by the Supreme Court. Although the learned counsel for the Respondent No. 2/Complainant and the learned State Counsel stressed that the Petitioner is a habitual offender given the twelve FIRs lodged against him it is noted that no FIR has been reportedly filed against the Petitioner since the grant of bail in this case. As such, there is no evidence that he has repeated the offence or misused the concession of bail. As far as absconding is concerned, the Order dated 26.10.2020 whereby the Petitioner was declared proclaimed offender has been set aside vide Order dated 02.05.2023 wherein it has been observed that proceedings under Sections 87/88, Cr.P.C. were made in a mechanical manner.

10. For the foregoing reasons, instant Criminal Revision Petition is **allowed** and the Impugned Order dated 20.10.2020 is hereby set aside. Resultantly, the Petitioner shall be deemed to be on bail in FIR No. 146, dated 12.03.2020.

(SAMAN RAFAT IMTIAZ)
JUDGE

ADNAN