

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.Misc. (BCA) No. 42-A/2022

JUDGMENT

Date of hearing.....**06.02.2023**.....

Petitioner (Sajjad Ahmad) By Mr. Shad Muhammad Khan,
Advocate.

Respondents. (State) By Mr. Sajid-ur-Rehman Khan, Assistant
Advocate General and (Accused-respondent) By Mr.
Yasir Mustafa Swati, Advocate.

WIQAR AHMAD, J.- Sajjad Ahmad,

complainant of the case, lodged report of the occurrence at RHC Phulra on 23.07.2021 at 15:05 hours and stated therein that he alongwith his injured brother namely, Sarfaraz had been going to mosque of the village for offering their "Juma" prayers. When they reached near house of Muhammad Shahid, they found Rustam s/o Faqir Muhammad (accused-respondent) alongwith his sister Mst. Naheeda Bibi (co-accused) residents of same village at 13:30 hours. Rustam accused-respondent allegedly took out his 30-bore pistol and made firing at Sarfaraz with intention to kill him, as a result of which he received injury and fall on ground. Their cousin namely, Abdul Basit, also reached to the spot in meanwhile, who also got entangled with Rustam, as a result, he too

received minor injury on his right hand. Co-accused (Mst. Naheeda Bibi) was also alleged to have abused them and gave beating to the injured. A dispute arising out from an earlier divorce by deceased Sarfaraz to Mst. Naheeda Bibi was stated to have constituted motive for commission of the offence. Initially, murasila and FIR were entered under Section 324 PPC but later on the injured died, as a result of injury so received, therefore, section of law was substituted by Section 302 PPC.

2. Accused-respondent was arrested on 15.08.2021 and he filed an application for his release on bail which was allowed by learned Additional Sessions Judge Mansehra vide order dated 10.01.2022. Thereafter, petitioner has filed the instant petition for recalling of the *ibid* bail granting order.

3. Learned counsel for petitioner stated during the course of his arguments that accused-respondent had directly been charged for effective role of causing firearm injury to deceased then alive and that weapon of offence had also been recovered on his pointation but despite that he was released on bail by learned lower court, which order was

perverse and arbitrary, therefore, liable to be recalled. He placed reliance on the judgments delivered by Hon'ble Supreme Court of Pakistan in the cases of "*Abdul Aziz Vs. Saleh Muhammad & another*" reported as **1990 SCMR 346**, "*Mumtaz Vs. The State*" reported as **2012 SCMR 556**, "*Abdul Hayee & 02 others Vs. The State*" reported as **1996 SCMR 555**, "*Muhammad Irfan Vs. The State & another*" reported as **2020 SCMR 2017** and "*Sidra Abbas Vs. The State & another*" reported as **2020 SCMR 2089**.

4. Learned counsel for accused-respondent stated in rebuttal that though in the FIR a 30-bore pistol had been statedly used in the crime but later on Investigating Officer had shown 9MM pistol recovered from the accused on his pointation. Besides, he also stated that statement of one eyewitness namely, Abdul Basit, has been recorded with a delay of 35 days, therefore, case against the accused was that of further probe. He placed reliance on the judgments of Hon'ble Supreme Court of Pakistan delivered in the cases of "*Muhammad Asif Vs. The State*" reported as **2017 SCMR 486** and "*Abdul*

Majid Afridi Vs. The State & another” reported as **2022 SCMR 676**.

5. Learned Assistant Advocate General supported the submissions of learned counsel for petitioner in his arguments.

6. I have heard arguments of learned counsel for the parties as well as learned Assistant Advocate General and gone through record. It needs mention herein that State had not been made party in the instant bail cancellation, therefore, on the request of learned Assistant Advocate General, State was impleaded on the panel of respondent as respondent No.2. Office is directed to make necessary entries in heading of petition and record in this respect.

7. Perusal of record reveals that accused-respondent was directly named in the FIR at the first instance for effective role of causing firearm injury to brother of complainant namely, Sarfaraz. The postmortem report was also supporting version of complainant. Reasonable grounds did exist to believe that accused-respondent was connected with commission of offence, which was falling within the prohibitory clause of Section 497 Cr.P.C but despite that learned

lower court has released the accused on bail and that also by ordering him to furnish surety in a meager amount of just Rs.1,00,000/-. The reasons advanced by learned lower court while releasing accused on bail were also flimsy in nature. The court below has also tried to appreciate evidence deeply and has also drawn illogical presumptions therefrom. Deeper appreciation made for making a ground for bail was also not allowable at this stage but the reasoning made therein is also very strange and the presumptions drawn cannot be called to be legal, allowable or appealing to a prudent mind. Two specific reasons have also been given which included that in the FIR complainant had stated that firing had been made with 30-bore pistol while later on a 9MM pistol had been recovered on pointation of accused-respondent and that statement of one PW namely Abdul Basit had been recorded after a delay of almost one month. Besides, plea of consistency has also been applied. All these reasons were also not appropriate for consideration in releasing the accused on bail. So far as weapon of offence is concerned, these pistols of 30-bore and 9MM are manufactured by numerous local

and foreign manufacturers in different shapes and modes. Just on seeing a pistol in somebody else hand is not always sufficient to determine its bore with exactitude. So far as delayed statement of one of PW Abdul Basit is concerned, it is important to be noted that prosecution was also having other evidence against accused-respondent which included statement of complainant and other corroboratory evidence in the shape of postmortem report, recovery of weapon of offence etc, therefore, the only reason that statement of one of the witness had been recorded with a delay of 35 days was also not sufficient to make the case one of further enquiry. The principle of consistency has also been wrongly applied in the case. The lady co-accused namely, Mst. Naheeda Bibi had been treated to be having a role at par with the present accused-respondent by the court below without realizing the fact that role of causing firearm injury to deceased had solely been attributed to accused-respondent by complainant. None of the grounds for releasing accused-respondent on bail was available to learned court below. In such a case it was not difficult to dub the bail

granting order as arbitrary and perverse. While explaining the connotation “perverse”, Hon’ble Supreme Court of Pakistan has held in its judgment rendered in the case of “*Sidra Abbas Vs. The State & another*” reported as **2020 SCMR 2089**;

“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.”

8. So far as reliance of learned counsel for accused-respondent on the judgment delivered in the case of “*Abdul Majid Afridi Vs. The State*” reported as **2022 SCMR 676** is concerned, even there the Hon’ble Apex Court had relied on judgment in the case of “*Samiullah Vs. Laiq Zada*” reported as **2020 SCMR 1115**, where the following considerations had been categorized for 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 have been collected during the course of investigation which tends to establish guilt of the accused."

9. The first consideration is that where bail granting order is patently illegal, erroneous, factually incorrect and causes miscarriage of justice, then same may be recalled. It is consistent view of Hon'ble Supreme Court of Pakistan that where bail granting order is perverse, arbitrary or based

on irrelevant considerations, same may well be recalled.

10. As the bail granting order in the case in hand was found to be perverse and in disregard of the principles laid down for grant of bail by this court and the Hon'ble Supreme Court of Pakistan, same warrants interference of this court.

11. Another aspect of the case is that while granting bail to an accused named for effective firing at the deceased, the learned trial court had asked for a surety of just Rs.1,00,000/- with two sureties each in the like amount. While releasing an accused on such a meager amount of surety the court below has not also ensured presence of the accused at trial. This court also noticed same fact today when accused-respondent was present at the time of arguments today at the time of announcement of order he had slipped away. In cases where an accused is being released on bail, his surety bonds should be procured from him in a reasonable amount which is sufficient for ensuring his presence and attendance before the trial court. In this age of higher inflationary trends and consistent devaluation of rupee sticking to the

same one hundred thousand rupees, has no more been a sufficient amount for obtaining security, therefore, the order of learned court below was also bad for not obtaining sureties in sufficient amount from the accused-respondent prior to his release on bail.

12. In light of what has been discussed above, this petition is allowed and bail granted to accused-respondent vide order dated 10.01.2022 passed by learned Additional Sessions Judge-III Mansehra is recalled. Accused has left the court premises before announcement of order, therefore, local police shall arrest him and he shall accordingly be remanded to judicial custody where his custody shall further be regulated according to order of learned trial court. Non-bailable warrant of arrest shall be issued by the trial court at the first instance and his sureties will also be proceeded against according to law. The learned trial court shall also proceed against his sureties according to law after due notice.

Reasons recorded herein were aimed at disposal of the instant bail cancellation application, which are not

supposed to prejudice mind of learned trial
court, at the conclusion of trial.

Heard & Announced On:
06.02.2023.

Prepared & Signed On:
07.02.2023.

J U D G E

/*Saif. CS*/