

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.480 of 2025

Applicant : Faizan Basiq through Mr. Muhammad Daud  
Narejo, Advocate

Respondent : The State  
Through Mr. Qamaruddin, Deputy Prosecutor  
General, Sindh.

Date of hearing : 04.06.2025

Date of order : 04.06.2025

### **ORDER**

**MUHAMMAD HASAN (AKBER), J. –** Through this Criminal Miscellaneous Application under section 497(5) Cr.P.C., the applicant seeks cancellation of bail granted to Respondents 1 and 2 in FIR No.246 of 2025 under Sections 406, 420, 506, 34 PPC registered at P.S. Awami Colony KIA, Karachi vide bail granting Order dated 17.05.2025 by learned Additional Sessions Judge-VII/ GBV Model Court Karachi East.

2. It has been alleged in the FIR that the company of the accused had purchased 176 ton of coal from the complainant from which they had to pay Rs.72,08,005/- within 20 days but they failed to make such payment and kept postponing the payment and finally issued live threats, hence FIR was lost against him by the complainant.

3. Learned counsel for the applicant argued that the bail granting order was wrongly passed by the land court; that the respondents were not entitled to bail; the respondents are liable to pay the amounts of the transaction to the applicant; that the bail order was passed on vague grounds; and that the concession of bail granted to the respondents is liable to be recalled/cancelled.

4. Heard learned counsel and the learned DPG.

5. It is well settled by now that the principles governing cancellation of bail under section 497(5) Cr.P.C., are completely different from those for grant of bail. Ordinarily, the superior courts were reluctant to interfere with an order extending concession of bail unless very strong and exceptional grounds exist to interfere with such concession extended to a person who was otherwise clothed with freedom and any action of the court contrary to the above, would amount to curtailing the liberty of such person, which is a precious right guaranteed under the Constitution.<sup>1</sup> A quick study of the case law on the subject by the Supreme Court lays down the following position:

(a) that Bail is to be cancelled only if the bail granting order is patently perverse and is passed in violation of principles for grant of bail. The rule is settled, that mere possibility of an alternate view is not sufficient to recall bail.<sup>2</sup>

(b) that even if another opinion of the matter can be formed in comparison to the bail granting opinion, the same would not be a sufficient ground to cancel the bail, if in the light of the facts of the case it can be found to have qualified the test of calling further inquiry into the guilt of an accused in terms of subsection (2) of section 497, Cr.P.C.<sup>3</sup>

(c) that if the Court, on the basis of tentative assessment of evidence, forms an opinion that *prima facie* reasonable grounds existed to believe that accused has not committed an offence with which he was being charged with, he would be allowed bail, by virtue of subsection (2) of section 497, Cr.P.C. as of right.<sup>4</sup>

(d). that in Samiullah's case *ibid*, at least few guidelines have been spelled out for cancellation of bail, being: (i) that the bail granting Order has to be so patently illegal, erroneous, factually incorrect, that it resulted in miscarriage of justice; (ii) the accused had misused the concession of bail in any manner; (iii) the accused had attempted to hamper prosecution evidence by persuading/pressurizing prosecution witnesses; (iv) there was likelihood of abscondment of the accused beyond the jurisdiction of the Court; (v) the accused had attempted to interfere with the smooth course of investigation;

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1. 'Sami Ullah and another v. Laiq Zada and another' (2020 SCMR 1115); 'Tariq Bashir and 5 others v. The State' (PLD 1995 SC 34); 'Shahid Arshad v. Muhammad Naqi Butt and 2 others' (1976 SCMR 360).

2. 'Munir Ahmad v. The State and another' (2014 SCMR 1669); 'Suba Khan v. Muhammad Ajmal and 2 others' (2006 SCMR 66)

3. 'Suba Khan v. Muhammad Ajmal and 2 others' (2006 SCMR 66)

4. 'Bashiran Bibi v. Nisar Ahmad Khan' (PLD 1990 SC 83); 'Asmat Ullah Khan v. Bazi Khan' (PLD 1988 SC 621); 'Arbab Ali v. Khamiso and others' (1985 SCMR 195)

(vi) the accused misused his liberty while indulging into a similar offence; or  
(vii) some fresh facts and material had been collected during the course of investigation, establishing guilt of the accused.<sup>5</sup>

(e) It was further held that even where material available on the record did not support a finding of misuse of concession of bail by the accused in any manner, the court could decline cancellation of bail, even if it was satisfied that the bail granting order passed by the court below was not sustainable in the eyes of law. In case any material came on record *qua* misuse of privilege of bail was subsequently discovered, the matter could be remanded to the Court below.<sup>6</sup>

6. Applying the above principles to the facts of the present case, it appears from perusal of the bail granting order, that the respondent was admitted to bail since there was an admitted and unexplained delay of more than 11 months in lodging the FIR; that the matter appeared to be a civil dispute of some business transaction between the parties; that it was a clear case of recovery of amount regarding sale of coal by the complainant to the respondents; the issue pertains to alleged breach of terms of an agreement between the parties; that the matter was already dealt with by the concerned Association (KATI) between the parties; that the issue was of a civil nature; that during the course of hearing before the learned Sessions judge, that out of the amount mentioned in the FIR, the accused have already repaid substantial sums to the complainant and now the dispute only remains with respect to the remaining amount, that sections 420 and 506 PPC are bailable whereas section 406 PPC does not fall within the remit of prohibitory clause of section 497 Cr.P.C.; keeping in view the ingredients of offences punishable under section 406 and 420 PPC, both sections cannot be applied together in same FIR against the same accused. It was in view of the above that a case for further inquiry was made out. The learned counsel could neither spell out any illegality or perversity from the above considerations by the learned Judge, based whereon bail was granted in the instant case, nor could any material be pointed out to meet the test as settled by the Supreme Court in the above discussed cases.

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5. *'Sami Ullah and another v. Laiq Zada and another' (2020 SCMR 1115)*

6. *ibid*

7. The learned Additional District & Sessions Judge rightly formed the opinion that the essential conditions for grant of bail under section 497(2), Cr.P.C. were satisfied, and the same does not call for any interference by this Court. No case for recall of the bail concession was made out by the applicant and therefore, the application for cancellation of bail is dismissed in *limine*.

J U D G E