

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc. Application No.S- 163 of 2024

Applicant : Ghulam Abbas Kalhoro through Mr. Shabbir Ali Bozdar, Advocate.

Respondent No.1 : The State through Mr. Imran Mobeen Khan, Assistant Prosecutor General.

Respondent No.2 : Ghulam Hussain (Nemo)

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Date of Hearing : 07-09-2026

Date of Order : 07-09-2026

ORDER

TASNEEM SULTANA, J.- Through the instant Criminal Miscellaneous Application, filed under Section 497(5), Cr.P.C., the applicant/complainant Ghulam Abbas seeks cancellation of post-arrest bail granted to respondent No.2 Ghulam Hussain by the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Naushahro Feroze, in Criminal Bail Application No.10 of 2024, vide order dated 20.03.2024, arising out of Crime No.02 of 2023, registered at Police Station Pipri, District Naushahro Feroze, for offences under Sections 302, 324, 114, 504, 147, 148, 149, 337-F(v) and 337-H(ii), PPC.

2. Briefly, the prosecution case, as set out in the FIR, is that on 26.02.2023, at about 05:00 p.m., the complainant, his son Awais, his cousin Sabir Hussain and nephew Manthar were cutting grass in their landed property near the graveyard of Kot Ghulam Shah when eight persons, variously armed, arrived there. Respondent No.2 Ghulam Hussain, who was allegedly armed with a pistol, is attributed the role of firing upon Awais, which hit him on the abdomen. Awais was initially taken to Taluka Hospital, Kandiaro and was thereafter referred to PMC Hospital, Nawabshah, where he succumbed to the injury. During the same occurrence, injuries were also allegedly caused to Manthar.

3. Learned counsel for the applicant/complainant contended that respondent No.2 is specifically nominated in the FIR with the direct role of causing the firearm injury which resulted in the death of Awais; that the

ocular account is supported by the medical evidence; that during the first investigation respondent No.2 was found involved and challan was submitted against him; that his pre-arrest bail had earlier been declined and he was taken into custody; that the learned Court below gave undue weight to the subsequent investigation despite the specific accusation against him and the material collected during the first investigation; that the deposition of the Medical Officer confirms that deceased Awais had sustained a firearm injury which resulted in his death; and that the impugned order granting bail is not sustainable and the concession extended to respondent No.2 is liable to be recalled.

4. Heard learned counsel for the applicant/complainant as well as learned Assistant Prosecutor General for the State and perused the material available on record, including the impugned order and the deposition of the Medical Officer.

5. The principles governing cancellation of bail are well settled. The considerations for cancellation of bail are different from those which govern its grant. Once bail has been granted by a competent Court, it is not to be recalled merely because another view of the same material may also be possible. Interference under Section 497(5), Cr.P.C. is justified where the bail-granting order is patently illegal, erroneous, arbitrary or factually incorrect and has resulted in miscarriage of justice, or where the accused, after being released on bail, has misused the concession extended to him.

6. In the case of Sami Ullah and another v. Laiq Zada and another (2020 SCMR 1115), the Hon'ble Supreme Court of Pakistan has held that bail granted to an accused can be recalled in the following circumstances: -

“i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted in 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 has 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.”

7. In the present case, respondent No.2 is specifically nominated in the FIR and has been assigned the direct role of firing upon Awais, which, according to the prosecution, caused the fatal injury. The Medical Officer has also confirmed a firearm injury on the epigastric region of the abdomen and opined that the death resulted from the internal damage caused thereby. These circumstances form a material part of the prosecution case. The present proceedings, however, concern cancellation of bail already granted by a competent Court, and the impugned order is therefore to be examined within the settled parameters governing such cancellation.

8. A perusal of the impugned order shows that the learned Court below had before it two investigations reaching different conclusions. In the subsequent investigation conducted by an officer of the rank of DSP, respondent No.2 was declared innocent on the basis of CCTV footage and CDR material stated to indicate his presence at a considerable distance from the place of occurrence. The learned Court also noticed the CDR relating to the complainant, which, according to the subsequent investigation, raised a question regarding his presence at the place of incident. The opinion of an Investigating Officer, whether recorded during the first or subsequent investigation, is not binding upon the Court. Nevertheless, the subsequent investigation and the material collected therein formed part of the record before the learned Court and were considered along with the earlier investigation while deciding the bail application.

9. The deposition of Dr. Mehmood Hassan had also been recorded before the impugned order was passed. While confirming that deceased Awais had sustained a firearm injury which proved fatal, the Medical Officer stated during cross-examination that Awais was brought to the hospital in injured condition at about 04:30 p.m., whereas the FIR gives the time of occurrence as about 05:00 p.m. He further stated that, according to his opinion, the injury might have been sustained at about 04:00 p.m. The

effect of these statements, as well as the evidentiary worth of the CDR and CCTV material, is ultimately to be determined by the trial Court after recording and evaluating the evidence. These circumstances, however, were available before the learned Court when it considered the bail application and were taken into account while forming the view that the case called for further inquiry under Section 497(2), Cr.P.C.

10. The contention of the applicant, in substance, is that in view of the direct role attributed to respondent No.2 and the medical evidence, the learned Court below ought not to have placed reliance upon the subsequent investigation for extending the concession of bail. The impugned order, however, shows that the learned Court considered the material available before it and, on that basis, found the case one of further inquiry. Merely because the same material may also be capable of a different appreciation does not furnish sufficient ground for recalling bail already granted. Nothing has been pointed out to show that the impugned order was based upon material extraneous to the record or that the discretion exercised by the learned Court was patently illegal, arbitrary or factually incorrect so as to have resulted in miscarriage of justice.

11. There is also nothing on record to show that respondent No.2, after his release on bail, has misused the concession, attempted to abscond, tampered with the prosecution evidence, pressurized the complainant or any prosecution witness, interfered with the trial proceedings or otherwise conducted himself in a manner warranting cancellation of his bail.

12. In view of the above facts and circumstances, no ground for interference under Section 497(5), Cr.P.C. is made out. Consequently, the instant Criminal Miscellaneous Application is **dismissed**.

J U D G E

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