

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

Cr.Bail Appln. No.146 of 2019

Date

Order with signature of Judge

For hearing of bail application

17.8.2020.

Khawaja Shamsul Islam, advocate along with applicants.

Mr. Zahoor Ahmed, DPG for the State.

Mr. Shamsher Ali Kazmi, advocate holding brief for Mr. Habib Ahmed, advocate for the complainant.

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In the instant matter, interim pre-arrest bail was granted to the applicants/accused vide order dated 24.1.2019 by my learned brother Justice Salahuddin Ahmed Panhwar. Whereafter according to the roster, the matter was fixed before me for confirmation or otherwise of the interim bail granted earlier to the applicants/accused.

After hearing all the learned counsel for the parties interim bail granted earlier was confirmed vide order dated 13.6.2019. The complainant however assailed the order of confirmation of bail before the Hon'ble Supreme Court of Pakistan and the Hon'ble Apex Court vide order dated 07.07.2020 was pleased to remand the case to the 'High Court' to decide the same afresh after affording proper opportunity of hearing to the parties. The order of the Hon'ble Apex Court is reproduced as under:

*"We have heard learned counsel for the petitioner and perused the available record. Prima facie, the ingredients of pre-arrest bail are missing in this case. We are inclined to remand the case back to the High Court to decide the same afresh after affording proper opportunity of hearing to the parties. The impugned judgment is set aside and this petition is converted into appeal and allowed to the above extent. However, the interim bail granted by the High Court shall remain intact till the bail application is finally decided." (underline emphasis)*

It is noted that after remand by the Hon'ble Supreme Court of Pakistan Mr. Mehmood Alam Rizvi, advocate has filed vakalatnama on behalf of the complainant, therefore, in view of the fact that Mr. Mehmood Alam Rizvi is not before me, the office placed the matter before the Hon'ble Chief Justice for seeking orders on following note:

- a) 'The matter may be fixed on 17.08.2020 according to Roster of sittings on account of "NOT BEFORE".

OR

- b) The above matter may be fixed on 17.8.2020 before the Hon'ble Mr. Justice Irfan Saadat Khan'.

On the above note, the Hon'ble Chief Justice was pleased to pass the following order:-

*"Since the instant matter was heard and decided by my learned brother J. Irfan Saadat Khan vide order dated 14.6.2019. Besides at the time arguments someone else was appearing for complainant. Later the matter was heard by Hon'ble Supreme Court and remanded the matter to this Court with directions to decide afresh vide order dated 07.7.2020. It seems that power of Rizvi has been filed in August 2020. Be that as it may, the matter may be placed before same bench irrespective of power filed by Mr. Rizvi".*

In my humble view, from the perusal of the order of the Hon'ble Supreme Court, it appears that the matter has been remanded to the 'High Court' to decide the same afresh after affording opportunity of hearing to the parties, whereas there is no mention in the order that the matter may be placed before the same bench. Moreover, in my humble view, once the order on merits has been set aside, the only order holding the field and intact now is the interim bail order, therefore, keeping in view the above factual and legal position as emerged in the instant case, this matter could be heard and finally decided by any learned Judge of the High Court as per roster, particularly, when the counsel for the complainant i.e. Mr. Mehmood Alam Rizvi is 'Not before me' and presently, I am heading DB-I as per roster.

Office is accordingly directed to once again place the matter before the Hon'ble Chief Justice for seeking appropriate orders. In the meanwhile, the matter is adjourned to 24.8.2020 at 12.00 Noon.

JUDGE