

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Miscellaneous Application No.S-39 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection.
For hearing of main case.

05-05-2023

Mr. Ghulamullah Chang, advocate for applicant along with applicant.

Mr. Mahfooz Ali Leghari, advocate for respondents No.1 to 3.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Through instant criminal miscellaneous application, the applicant/complainant seeks cancellation of bail under section 497 (5) Cr.P.C. challenging the order dated 05.01.2023, passed by the learned Additional Sessions Judge-I/MCTC, Mirpurkhas in Crime No.54 / 2022 registered at PS Taluka Mirpurkhas for the offence under section 302, 324, 114, 34 PPC whereby the respondents No.1 to 3 were admitted to post-arrest bail.

2. Learned counsel for the applicant contends that after grant of bail, the respondents No.1to3 are extending threats of dire consequence to murder the complainant. He further contends that the learned trial Court has not considered the material collected by prosecution against the respondents/accused properly but admitted the accused to bail without appreciating the material available on record. He, therefore, prays for cancellation of bail granted to the respondents/accused.

3. On the other hand, learned counsel appearing on behalf of respondents/accused contends that no threats have been extended nor the accused have misused the concession of bail; in fact, they have been implicated in the instant case falsely. He further contends that the respondents/accused have succeeded to bring their case of further inquiry, therefore, on mere false allegations as are being levelled on behalf of complainant, the respondents/accused cannot be punished by cancelling their concession of bail. He further contends that schedule for

proceedings of the case has been issued by the learned MCTC /trial Court and the case is fixed on 16.05.2023, as such, there is likelihood that the trial would be concluded in near future. He, therefore, prays for dismissal of instant criminal miscellaneous application.

4. Learned A.P.G. Sindh half heartedly supports the impugned order; however, she submits that role of respondent/accused Qurban Ali is only instigation while mere presence of respondents/accused Muhammad Bachal and Irfan Ali has been shown at the place of incident.

5. Admittedly, role assigned upon the respondent/accused Qurban Ali is mere instigation whereas, the respondents/accused Muhammad Bachal and irfan Ali have been shown present at the place of incident. In the case of 'Qurban Ali v. The State and others' (2017 SCMR 279), whereby the Honourable Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of instigation. In such circumstances, it is the trial Court to determine, after recording pro and contra evidence, whether the applicant/accused was vicariously liable for the acts of co-accused. In another case of 'Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125), the bail was granted to accused on the ground that despite being allegedly armed with deadly weapons. Same was not used in the commission of offence. In the instant case, it is yet to be seen after recording the evidence of prosecution witnesses as to the allegation against the respondents/accused that they have shared the common intention with co-accused in the commission of offence or not.

6. No proof is placed on record as to whether the respondents/accused have misused the concession of bail. Furthermore, for cancellation of bail the complainant is essentially required to urge strong and exceptional ground of misuse of the concession of bail to the accused and tampering with evidence once bail is granted by a Court of competent jurisdiction. The factors for cancellation of bail are to be considered i.e. conduct of parties after bail whether accused are misusing the facility of bail or likely to abscond; whether they are hampering the investigation or threatening the witnesses and whether accused are creating obstruction in the course of justice. In the instant case, mere saying so is not sufficient but there must be tangible documentary evidence. Grant of bail to accused is discretionary in accordance with settled norms of justice and for cancelling the bail already granted to

accused, there must be grounds warranting interference in the bail granting order unless the accused fails to establish the existence of reasonable grounds leading to a belief that he was not guilty of the offence. Section 497 (5) Cr.P.C. is not punitive in nature and there is no compulsion for canceling bail and it does not command the Court to cancel the bail even when the offence is punishable with death or imprisonment for life and even if the grant of bail is prohibited under section 497 (1) Cr.P.C. In the instant case, the learned MCTC/trial Court has also issued a schedule for proceeding the case and it is also fixed on 16.05.2023. In such circumstances, learned trial Court is directed to expedite the trial and conclude it within a period of thirty (30) days. It is made clear that no adjournment shall be granted to either party on flimsy grounds.

7. In view of the above, instant criminal miscellaneous application is **dismissed**.

JUDGE